

Highways guidance note

Private Streets and the Advance Payments Code

March 2022 (Version 1)

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This highways guidance note

General

1 In this highways guidance note we describe the *Advance Payments Code* or *APC* and how it affects developments. We also give an overview of the *Private Street Works Code* or *PSWC*.

The Advance Payments Code and You

2 We have written a leaflet called **The Advance Payments Code and You**. We wrote it to answer the most common questions about *APC notices*.

3 We recommend that you read **The Advance Payments Code and You** before you read this highways guidance note.

4 We usually include a copy of **The Advance Payments Code and You** when we send someone an *APC notice*. It is also available on [our highway adoptions webpage](#).

Intended use and limitations

5 We wrote this highways guidance note mainly to help developers, but it will also be used by *highways* teams within Kirklees Council.

6 The information we give here about the law is only an overview. It is based upon our understanding of the law and only applies within the Borough of Kirklees. You should not use it as an alternative to independent legal advice.

Implementation

7 This highways guidance note applies to all *APC notices* issued on or after 1 April 2022 and to any works related to them.

Definitions

8 In this highways guidance note we use the definitions given in the box overleaf.

In this highways guidance note we use these definitions

APC (Advance Payments Code)

- The *APC* is part of the law covering *highways* and other *streets*. It can be found in **sections 219 to 225** of the **Highways Act 1980**.

APC deposit

- The *APC deposit* is the money the landowner might have to pay to Kirklees Council before anyone may start work on the related *approved building*.

APC notice

- An *APC notice* is the official way that we tell you the amount of an *APC deposit*.

Approved building

- An *approved building* is one that's been given building regulations approval.

Exemption notice

- An *exemption notice* is the official way we tell you that your *approved building* is not covered by the *APC*.

Frontage

- The *frontage* of a building onto a *street* is the part of the building – and the part of the plot of land that contains the building or is used with the building – that *fronts* onto that *street*.

Frontager

- The *owner* of land that *fronts* onto a *street* is a *frontager*.

Fronting

- A building *fronts* onto a *street* if the plot it is on is immediately adjacent to the *street* even if only the side or back of the plot is adjacent.

Highway

- A *highway* is a *street* over which the public has a right to travel, sometimes called a right to pass and repass.

Highways technical approval

- We give *highways technical approval* to proposals if we have thoroughly reviewed them and consider that they are acceptable to Kirklees Council, as the local *highway* authority.

Premises

- In normal use, '*premises*' means a building together with its land and outbuildings. However, we use the same definition as the **Highways Act 1980**. In it, '*premises*' also means a piece of land on its own – such as a field, vacant plot, or development site – even if it doesn't contain any buildings.

Private street

- A *private street* is any *street* that is not a *publicly maintainable highway* (though it can be a *highway* that isn't publicly maintainable).

Private street works

- *Private street works* are *street works* done in a *private street*. These don't have to be done privately; they could be done by Kirklees Council.

PSWC (Private Street Works Code)

- Like the *APC*, the *PSWC* is part of the law covering *highways* and other *streets*. It can be found in **sections 205 to 218** of the **Highways Act 1980**.

Publicly maintainable highway

- A *publicly maintainable highway* is any *highway* that Kirklees Council, as the local *highway* authority, is legally obliged to maintain.

Relevant proposed street

- A *relevant proposed street* is any proposed *street* shown on a relevant application for building regulations approval or planning permission.

RSA (road safety audit)

- An *RSA* or *road safety audit* is a formal way of thoroughly assessing the road safety aspects of proposals for new *highways* or alterations to existing ones.

Section 38 agreement

- *Section 38 agreements* are made between Kirklees Council and developers under **section 38** of the **Highways Act 1980**. Using them, the council and developers agree that, if the developer builds *streets* to the agreed layout and standard, the council will adopt them as *publicly maintainable highways*.

Street

- In normal use, a *street* is a road in a built-up area with, typically, houses or other buildings along it. However, we use the same definition as the **Highways Act 1980**. This says a *street* is the whole or part of any *highway*, road, lane, footway, alley, passage, square, or court or any other land laid out as a way, whether or not it is a thoroughfare and even if it is not made up as a *street*.

Street works

- We use the same definition as the **Highways Act 1980**. This says that *street works* are any works for the sewerage, levelling, paving, metalling, flagging, channelling, and making good of a *street*, including the installation of *street* lighting.

The CDM Regulations

- The **Construction (Design and Management) Regulations 2015**

Background information

The Advance Payments Code and the Private Street Works Code

Introduction

9 The *APC* and the *PSWC* are both concerned with constructing or making up *private streets* or *relevant proposed streets* to a satisfactory standard.

10 They can also help landowners and developers to get *private streets* that have been constructed or made up adopted as *publicly maintainable highways*.

The Advance Payments Code

11 The *APC* is a way of making sure that we would have money available should we have to step in to construct or make up a *private street* or *relevant proposed street*.

12 The *APC* is called the *Advance Payments Code* because it allows us to get the money in advance of work starting on an *approved building*. This means that we should have the money available before the *approved building* is occupied.

13 If we had to step in to construct or make up a *private street* or *relevant proposed street*, then, unless we could get agreement from the landowner of the *street*, we would have to use the *PSWC* to do the works.

The Private Street Works Code

14 The *PSWC* allows us to construct or make up *private streets*. We can use it even if there isn't a developer, we don't own the land, or the landowner is unknown.

15 The *PSWC* allows us to get the money we need to construct or make up a *private street* from the *frontagers* and from any *APC deposits* that have been paid for buildings on the *street*.

16 If no *APC deposits* have been paid, then all the money required would have to come from the *frontagers*.

More information

17 For more information about *private streets*, *publicly maintainable highways*, and other *highways*, please see our highways guidance note **Introduction to Highways and Adoptions**. We wrote this to give a simple introduction to the legal side of *highways* and how they are created.

18 All our highways guidance notes are available on [our highway adoptions webpage](#).

Streets and private streets

Proposed or unfinished streets

19 The definition of *street* used in the **Highways Act 1980** includes land that is not made up as a *street*. This means that proposed roads and paths and unfinished roads and paths on building sites can all count as *streets*.

Private streets

20 The definition of *private street* used in the **Highways Act 1980** seems straightforward as it is any *street* that is not a *publicly maintainable highway*. However, there are a lot of *streets* in Kirklees where only part is *publicly maintainable highway* with the rest counting as *private street*.

21 The *private street* part of a *street* does not have to be at one end: one side of a *street* could be private with the rest *publicly maintainable highway*. For example, where new houses have been built beside but set back from an existing road, the strip of land across the front of the houses could count as a *private street*, even if the road itself is *publicly maintainable highway*.

Private streets in new developments

22 Most developments will include private roads or paths. Some will contain other private features, such as car parks, driveways, garage courts, or service yards. Many of these could count as *private streets*.

Shared private drives

23 Many new developments contain a mixture of new *streets* that the developer wishes to have adopted as *publicly maintainable highways* and private drives that serve more than one residential *premises* but typically not more than five. Such shared private drives count as *private streets*.

Problems with private streets

24 Some *private streets*, particularly in business or retail parks, can be well looked after and it is in the public interest for them to remain private. However, some *private streets* have caused problems.

Access problems

25 If *private streets* with residential or commercial buildings are not looked after, access might become difficult or even impossible for:

- Residents, workers, or visitors
- The police, fire, or ambulance services
- Servicing and delivery vehicles

Other problems

26 If *private streets* are poorly designed or constructed or badly maintained, then they might result in danger to the public or traffic congestion and they might cause difficulties for the council:

- *Private streets* that are not properly maintained can become dangerous to use.
- Entrances or exits of *private streets* that are poorly designed or constructed might encourage drivers to make dangerous manoeuvres to use them or force vehicles to queue on nearby *publicly maintainable highways*.
- Poor road surfaces can cause drivers to leave their vehicles on *publicly maintainable highways* outside the development and park dangerously, in the way of traffic, or where they take up scarce parking space.
- Where there aren't enough parking spaces or where they are poorly designed or constructed, drivers might also choose to park on nearby *publicly maintainable highways* instead.
- Where loading and unloading facilities aren't suitable or are poorly designed or constructed, drivers

might have to load or unload on nearby *publicly maintainable highways*, leading to traffic congestion or danger to the public.

- If *private streets* are not suitably drained, surface water can build up until it floods neighbouring *premises* or nearby *publicly maintainable highways*.
- Poorly designed or badly maintained *street* lighting can make *private streets* appealing to criminals and can discourage legitimate users.
- *Private streets* that look neglected can encourage fly tipping.
- *Private streets* that are usually empty at night but still accessible to the public can attract antisocial or criminal behaviour.
- Where *private streets* are not kept in good condition, we might come under pressure to spend public money on making them safe, even though we do not have any legal responsibilities for them.
- Where *private streets* give access to residential *premises* in more than one ownership, neighbours might disagree about any repair work required, leading to disputes and pressure on us to adopt poorly designed or constructed *private streets*.

Legal liability

27 Where *private streets* are open to the public but not dedicated as *highways*, the landowners of the *private streets* might be liable if any injuries or damage are caused by their poor condition.

Kirklees Council's interest in private streets

Our legal obligations

28 As the *highway* authority for Kirklees, we are usually more interested in *publicly maintainable highways* than *private streets*. However, we cannot ignore *private streets* and the law obliges us to consider various aspects of *private streets* when we make decisions about them.

Road safety and traffic flow

29 As the local *highway* authority, the law obliges us to consider how *private streets* might affect the safety of road users. We also have to consider how *private streets* might affect traffic flow on nearby *publicly maintainable highways*.

Employee safety

30 As an employer, the law obliges us to make workplaces for our employees – including road workers and colleagues involved with waste collection – as safe as reasonably practicable. That means we have to consider whether *private streets* could affect how we can clean or maintain nearby *publicly maintainable highways*. Also, we have to make sure that the waste collection arrangements would be safe for our employees.

Crime and disorder

31 As a local authority, the law obliges us to consider the likely effects of our decisions on crime and disorder. This includes any decisions we make about *private streets*.

Equality

32 The law on equality describes various ‘protected characteristics’. These include whether someone has a disability.

33 It is unlawful for us to discriminate against anyone because of their protected characteristics. In addition, the law obliges us to carefully consider whether *private streets* might unreasonably affect people because of their protected characteristics. For example, whether the entrance to a *private street* would be more of a problem for people with disabilities than for those without.

More information

34 We give more information about what the law obliges us to consider when we make decisions about *private streets* in our highways guidance note **Highways Technical Approval**. This is available on [our highway adoptions webpage](#).

Publicly maintainable highways

Highway adoptions

35 Kirklees Council, as the local *highway* authority, may adopt *streets*. This means that they become *publicly maintainable highways*.

36 When we adopt a *street* as *publicly maintainable highway*:

- we take on liability for its safe operation and ongoing maintenance

- the landowner or developer stops having any responsibility for it

Streets which we will adopt

37 In general, we will adopt:

- *Streets* serving more than five residential *premises*
- Parts of the accesses to large, individual *premises* – such as factories, supermarkets, or blocks of flats – where it is in the public interest for the entrance bellmouth to be entirely within the *publicly maintainable highway*
- In some situations, *streets* within large industrial or commercial developments where it would otherwise leave individual *premises* isolated from the network of *publicly maintainable highways*

38 We have written a highways guidance note, **Highway Adoptions Criteria**, to clarify exactly what we would or would not adopt. This is available on [our highway adoptions webpage](#).

Highways technical approval

39 Our responsibilities for *publicly maintainable highways* are very onerous. Therefore, we need to be very careful about agreeing to landowners’ or developers’ proposals for:

- New *publicly maintainable highways*
- New *private streets* near to existing *publicly maintainable highways*
- New connections between *private streets* and existing *publicly maintainable highways*

40 We will not agree to any of the above proposals unless we first do a thorough technical review of them. Because of the responsibilities that we might have to take on, this technical review will be in much greater detail than when we review an application for planning permission.

41 Once we have finished the technical review of a landowner’s or developer’s proposals, if we confirm that they are acceptable, we will give them *highways technical approval*.

Planning permission and building regulations approval

42 *Highways technical approval* is different to both planning permission and building regulations approval. If we give *highways technical approval* to a proposed *street*, it doesn't mean that:

- we have given it planning permission
- we have discharged any planning conditions
- we have given or changed any building regulations approval

Road safety audits

43 Any new *streets* that we adopt as *publicly maintainable highways* have to be safe for the public to use. In addition, proposed works to *private streets* should not significantly reduce the safety of *highway* users.

44 As part of our technical reviews, we need to assess the impacts of proposed *streets* on the safety of *highway* users. We do this by requiring that developers do *road safety audits* or *RSAs* of their proposals.

45 We explain *RSAs* in more detail in [Annex A](#).

More information

46 For more information about what we have to consider when deciding whether to give *highways technical approval*, please see our highways guidance note **Highways Technical Approval**. This is available on [our highway adoptions webpage](#).

Safety and health in design and construction

The Construction (Design and Management) Regulations 2015

47 The way that construction projects – such as proposed *streets* – are designed and built is controlled by the **Construction (Design and Management) Regulations 2015** (the CDM Regulations).

48 We expect all proposed *private streets* and changes to existing ones to be designed and built in accordance with **the CDM Regulations**. If, at any time, we thought that a landowner or developer was not complying with their legal obligations under **the CDM Regulations**, then we could decide that it would not be acceptable for us to have any legal agreements with them.

More information

49 We say more about **the CDM Regulations** and how they affect proposals for new *streets* or works to existing ones in [Annex B](#).

50 We have prepared a highways guidance note **Highway Adoptions and the CDM Regulations**, which gives more information on how the regulations affect *highway* adoptions in Kirklees. This is available on [our highway adoptions webpage](#).

The APC: An introduction

How the APC works

51 The *APC* is very complicated. How it works in practice depends upon lots of different things. These include when the developer wants to start work, when the design of the *streets* is finished, who does the work, and whether the developer wants the *streets* adopted.

52 In principle, the *APC* works as follows:

- Whenever a proposed building in Kirklees is given building regulations approval, Kirklees Council, as the *highway* authority, is officially told.

Warning!

If you've received an *APC notice* for a proposed building, it may be a criminal offence for anyone to start work erecting it or even making the site ready for it

- We then check to see whether the *approved building* would be on a *private street* or *relevant proposed street* and whether the *APC* applies.
- If the *APC* applies, we then work out the total amount it would cost us should we have to step in

to construct or make up the *private street* or *relevant proposed street* to a satisfactory standard.

- We then share this total making-up cost between the different *premises* on the *street* based upon the lengths of each *premises' frontage* onto that *street*.
- To work out the share for a particular *approved building*, we first measure the length of the *frontage* of that building onto the *street* and then divide this by the total length of the *frontages* of all the other *premises*; this tells us what fraction of all the *frontages* is due to the *approved building*.
- We then take this fraction of our total making-up cost to work out the *approved building's* share; this share is the *APC deposit* for that *approved building*.
- We then issue an *APC notice* to the person or body that was given the building regulations approval; this officially tells them the amount of the *APC deposit*.

53 When we divide our total cost for making up a *private street* between the various *premises* on that *street*:

- we take into account all *premises*, including those – such as fields, vacant plots, and development sites – that do not contain any buildings; but
- the law obliges us to treat some exempt *premises* differently, which can affect the amount of the *APC deposit*.

We say more about exempt *premises* in paragraphs **57** to **66**.

Criminal offence

54 Once we have issued an *APC notice*, it is a criminal offence for anyone to start work erecting the *approved building* – or even making the site ready for it – unless the landowner of the site first of all does one of the following:

- makes sure that someone pays the *APC deposit* to the council
- makes sure that someone gives a security to cover the amount of the *APC deposit*
- enters into a *section 38 agreement* with the council for the *private street*

APC deposits and securities

Deposits or securities

55 The law allows us to accept a security instead of being paid the *APC deposit*. However, the security has to be to 'our satisfaction' and we do not usually accept them. If you are thinking of giving us a security instead of paying an *APC deposit*, then please get in touch with our *highway* adoptions team as soon as you can.

Calculation

56 As we say in paragraph **52**, the required *APC deposit* is an *approved building's* share of our total costs should we have to step in to construct or make up the *street* to a satisfactory standard. Usually, we work this out by dividing our total cost between the various *premises* on the *street*, but the law obliges us to treat some exempt *premises* differently.

Exempt premises

57 If *premises* are exempt, then we are not allowed to issue *APC notices* for them and no *APC deposits* are required. Some exempt *premises* affect the amount of the *APC deposit* payable for other *premises* in the same *street*.

Existing highways

58 Existing *highways* that join *private streets* – whether at the end or part-way along – count as *premises fronting* onto those *streets*, but we are not allowed to issue *APC notices* for them.

59 If we had to step in to construct or make up a *private street* which was joined by an existing *highway*, we would not be allowed to charge the owners of the existing *highway*. Instead, the council would have to pay the owners' share of the costs. Therefore, having an existing *highway* joining onto a *private street* does not affect the amount of the *APC deposits* for the other *premises*.

Industrial buildings

60 We are not allowed to issue *APC notices* for some exempt industrial buildings. However, if we had to step in to construct or make up a *private street* which contained exempt industrial buildings, we could still charge their owners. Therefore, having exempt

industrial buildings on a *private street* does not affect the amount of *APC deposits* for the other *premises*.

61 We explain which industrial buildings are exempt in paragraph **78**.

Railway and canal buildings

62 We are not allowed to issue *APC notices* for some exempt railway or canal buildings.

63 Where a *private street* contains exempt railway or canal buildings, we are not allowed to include them when we share out the total making-up cost. Instead, we have to divide their share between the other *premises*. Therefore, the *APC deposits* for the other *premises* would be higher than if there weren't any exempt railway or canal buildings.

64 We explain which railway or canal buildings are exempt in paragraph **79**.

Places of public religious worship

65 Some places of public religious worship are exempt from the *PSWC*. That means that, if we had to step in to construct or make up a *private street* which contained exempt places of public religious worship, we would not be allowed to charge their owners. Instead, the council would have to pay their share of the costs. Therefore, having exempt places of public religious worship on a *private street* does not affect the amount of the *APC deposits* for the other *premises*.

66 We explain which places of public religious worship are exempt in paragraph **81**.

Estimated costs

67 Usually, at the time building regulations approval is given for a building on a *relevant proposed street*, the *street* has not been designed in detail. Similarly, when approval is given for a building on an existing *private street*, the works required to make the *street* up to a satisfactory standard have usually not been designed. This means that we can only roughly estimate our total costs.

Already made-up private streets

68 If you have already made up the *private street* and this is clear from the drawings that were given building regulations approval, we will take into

account how much work is left to do when we work out the amount of the *APC deposit*.

Adoption

69 We describe in paragraphs **189** to **196** what to do if you have already made up a *private street* and you'd like us to adopt it as a *publicly maintainable highway*.

Buildings to which the APC applies

General

70 The *APC* doesn't apply to all *approved buildings*. Whether or not it applies depends upon the type of *approved building*, who owns the land it will be built on, and the characteristics of any *streets* that it will *front* onto.

71 The easiest way to work out whether the *APC* applies to a particular *approved building* is to use **Flow Chart A** (page **9**)

Type of street

72 The *APC* only applies to *approved buildings* that *front* onto a *private street* or *relevant proposed street*. It doesn't apply to *approved buildings* that only *front* onto *publicly maintainable highways*.

Extensions

73 The *APC* doesn't apply to extensions to existing buildings. However, where an *approved building* joins onto an existing one – for example a new house built at the end of an existing terrace – it might apply.

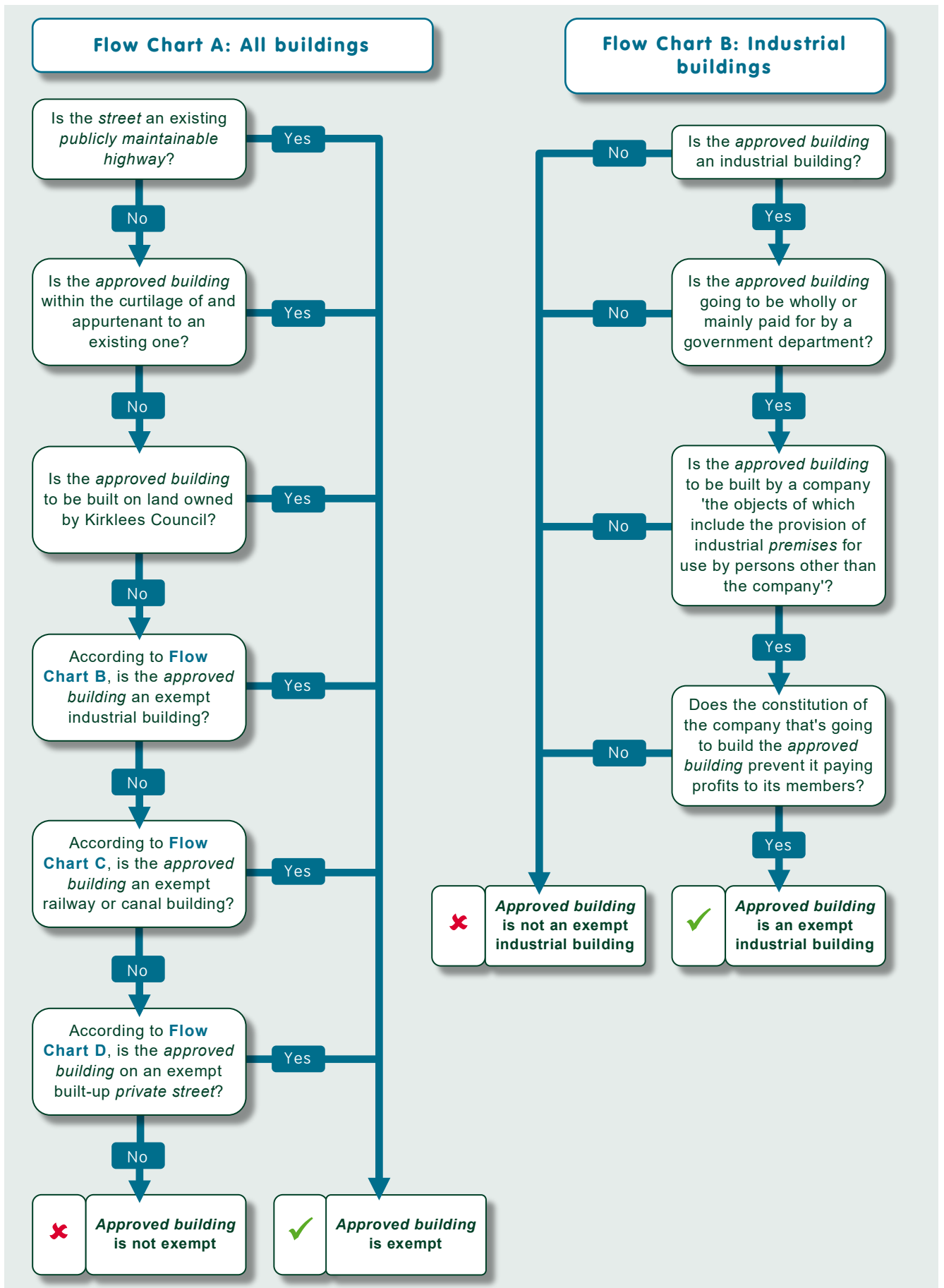
Outbuildings

74 The *APC* doesn't apply to *approved buildings* that are within the curtilage of and appurtenant to an existing building. However, the **Highways Act 1980** doesn't say what it means by 'curtilage' or 'appurtenant'.

'Curtilage'

75 'Curtilage' usually means an area of land which is:

- immediately next to and belonging to another building; and



- used for purposes connected with the use of the other building; and
- generally within the same enclosure as the other building.

However, what counts as the curtilage of a building isn't clear-cut and varies with each case.

'Appurtenant'

76 'Appurtenant' usually means that the use of the *approved building* is connected to the use of the existing one. For example:

- A new garage in the garden of an existing dwelling could be appurtenant.
- A new dwelling in the garden of an existing dwelling would not usually be appurtenant.

Buildings on land owned by Kirklees Council

77 The *APC* does not apply to *approved buildings* that are to be built on land owned by Kirklees Council, even if the *approved buildings* are to be built by a private developer.

Industrial buildings

78 As we say in paragraph **60**, the *APC* doesn't apply to some industrial buildings. To see whether the *APC* would apply to an *approved building* of this type, use **Flow Chart B** (page **9**).

Railway and canal buildings

79 As we say in paragraph **62**, the *APC* doesn't apply to some railway or canal buildings. To see whether the *APC* would apply to an *approved building* of this type, use **Flow Chart C** (page **11**).

Built-up streets

80 The *APC* doesn't apply to *approved buildings* on some *private streets* that are already built up. To see whether the *APC* would apply to *approved buildings* on a particular built-up *private street*, use **Flow Chart D** (page **11**).

Places of public religious worship

81 As we say in paragraphs **11** to **13**, the purpose of the *APC* is to make sure that we would have money available should we have to step in and use the *PSWC* to construct or make up a *private street* or *relevant proposed street*.

82 As we say in paragraph **65**, the *PSWC* doesn't apply to some places of public religious worship. These are Church of England churches and chapels and places of public religious worship which have been certified under the **Places of Worship Registration Act 1855**. In addition, the *PSWC* doesn't apply to any churchyard or burial ground attached to one.

83 However, an *approved building* cannot be a church or chapel or a certified place of religious worship until it is built. Therefore, we are not allowed to take into account this type of proposed use when we decide whether to issue an *APC notice*.

Cancellation of *APC* notices for places of public religious worship

84 If we have issued you with an *APC notice* for an *approved building* that later becomes a Church of England church or chapel or a certified place of religious worship, we are allowed to cancel the *APC notice*. However, we won't do so unless you ask our *highway* adoptions team.

85 If we cancel an *APC notice*, we will then refund any *APC deposit* paid or release any security given. We describe the way we will do this in paragraphs **108** to **112**.

Buildings on more than one street

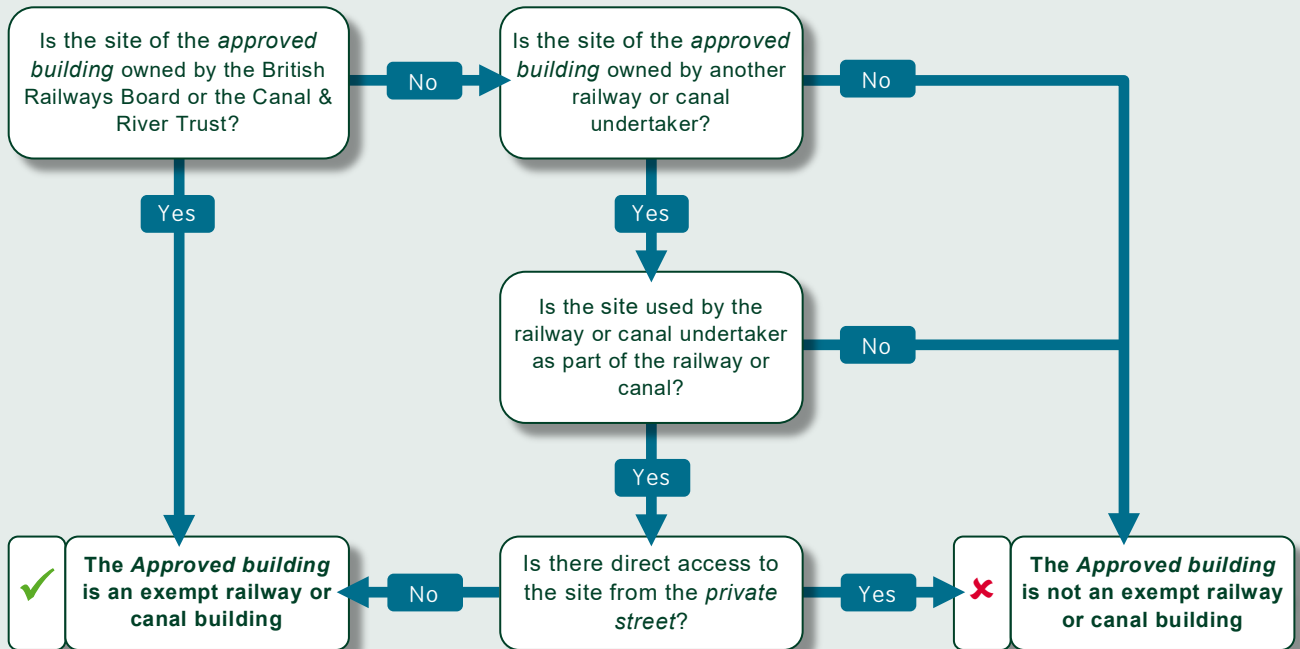
86 If the *approved building* is on more than one *private street* or *relevant proposed street*, then we treat each *street* separately: it might be that the *APC* applies because of more than one *street*. However, we ignore any *streets* that are neither *private streets* nor *relevant proposed streets*.

More than one applicable street

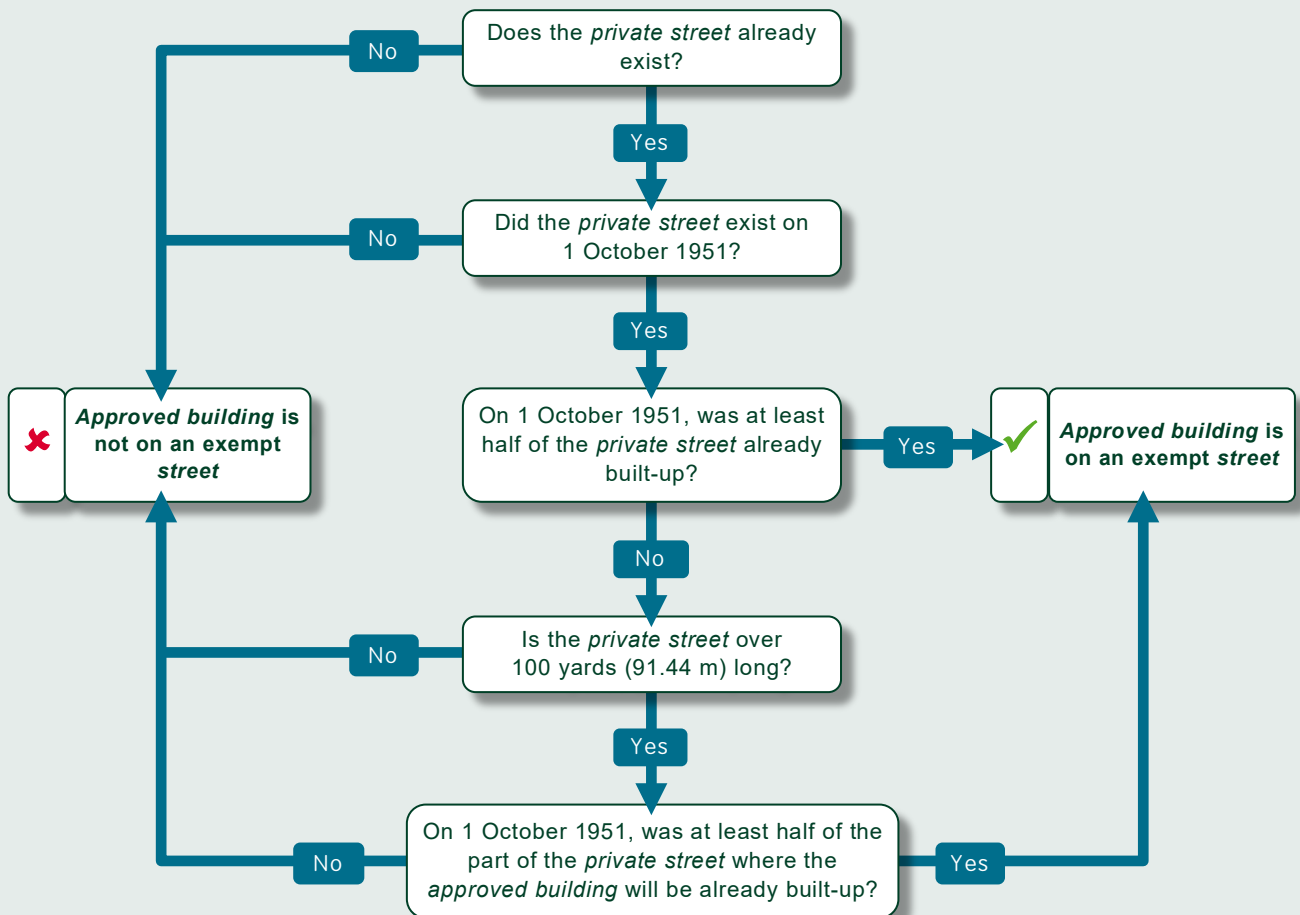
87 If an *APC notice* is required because the *approved building fronts* onto more than one *private street* or *relevant proposed street*, then:

- we issue a separate *APC notice* for each *street*
- we base the *APC deposit* required for each *street* only on the length of *frontage* onto that *street*

Flow Chart C: Railway and canal buildings



Flow Chart D: Built-up streets



Only one applicable street

88 If an *APC notice* is required because the *approved building fronts* onto more than one *street* but only one of them is a *private street* or *relevant proposed street*, then we base the *APC deposit* required only on the length of *frontage* onto that one *street*.

Developments of more than one building

89 On developments where more than one building requires building regulations approval, the different approvals can be given at the same time or at different times. The actual timing usually depends upon the developer's programme, the complexity of the proposed buildings, and the workload and capacity of the building approvals body.

Amount of APC deposits

90 When we work out the amount of an *APC deposit*, we take into account the *frontages* of all the *premises* on the *private street*, including those that do not have any buildings. Therefore, on developments with more than one building, the *APC deposit* for any particular *approved building* won't be affected by the programme for getting building regulations approval for the other buildings.

Building regulations approvals given at the same time

91 When building regulations approval is given for more than one *approved building* on the same development, at the same time, and to the same person or body, we will:

- work out different *APC deposits* for each *approved building*
- issue one combined *APC notice* covering all the *approved buildings* but showing separately the *APC deposits* for each *approved building*

Building regulations approvals given at different times

92 We are only allowed to issue *APC notices* for buildings that are given building regulations approval and not for planned buildings that have not yet been given approval. Therefore, we will treat buildings given approval at differently times separately. This

means that we might have to issue more than one *APC notice* for proposed developments that contain more than one building.

Two or more approved buildings with the same footprint

93 The law obliges us to issue an *APC notice* whenever a relevant proposed building is given building regulations approval, even when the new approval is for an *approved building* with the same footprint as another *approved building*. Of course, if two *approved buildings* have the same footprint, they cannot both be erected.

The APC and section 38 agreements

94 We are not allowed to issue *APC notices* for *streets* that are covered by *section 38 agreements*.

95 We describe how to use a *section 38 agreement* to get a *private street* adopted as a *publicly maintainable highway* in paragraphs [151](#) and [152](#).

APC notices and landownership

Landownership

96 The law obliges us to issue an *APC notice* whenever a relevant proposed building is given building regulations approval. However, you are allowed to apply for building regulations approval for a building on land you don't own. This means that we will sometimes issue an *APC notice* for an *approved building* even though the landowner didn't apply for building regulations approval.

97 An *APC notice* is only relevant if you want to erect the *approved building*. If you didn't apply for building regulations approval and aren't going to erect the *approved building*, then it doesn't matter whether you would have to pay an *APC deposit* first.

Property sales

98 When a property covered by an *APC notice* is sold, the legal obligations pass to the new landowner.

Properties split into different parcels

99 If a property is split into two or more parcels with different owners, then the amount of the *APC deposit* is divided between the different owners.

100 We work out the amount due for each parcel by measuring the *frontages* of the different parcels onto the *private street*. If a parcel doesn't *front* onto the *private street*, then no amount would be due for it.

New APC notices

101 We are not allowed to issue a new *APC notice* just because a property is sold.

Disagreements and appeals

Disagreements

102 Please get in touch with our *highway* adoptions team if you have been issued with an *APC notice* but think that:

- we shouldn't have issued an *APC notice*; or
- we should have issued an *APC notice* but not to you; or
- the *APC deposit* is too high.

We will then review whether a notice should have been issued and who it should have been sent to. We will also check the amount of the *APC deposit*.

Appeals to the Secretary of State for Transport

103 You can appeal to the Secretary of State for Transport if you have received an *APC notice* – or if you are the landowner of the site of the *approved building* – and you feel that the amount of the *APC deposit* is excessive.

104 If you appeal to the Secretary of State and they agree that the *APC deposit* is excessive, they can issue a 'determination' and reduce the amount.

105 If you are going to appeal, then you have to do so within one month of when the *APC notice* was issued.

106 You can appeal to the Secretary of State whether or not you have contacted us first.

107 Please ask our *highway* adoptions team if you would like us to explain how to appeal to the Secretary of State.

Cancellations, exemptions, reductions, and refunds

Introduction

108 In some situations, after we have issued an *APC notice*, we might have to cancel the *APC notice*, issue an *exemption notice*, or reissue the *APC notice* but for a reduced *APC deposit*.

Refunds

109 After an *APC deposit* has been paid, if we then:

- cancel the *APC notice* or issue an *exemption notice*, we will refund the *APC deposit*
- reissue the *APC notice* but for a reduced *APC deposit*, we will refund the difference between what's been paid and the reduced amount

APC deposits

110 When we refund an *APC deposit*, we will:

- give it to the landowner of the site of the *approved building*, even if they didn't pay the *APC deposit*, and even if the land has been sold since the *APC deposit* was paid
- include interest

Securities given instead of APC deposits

111 If, instead of being paid an *APC deposit*, we have been given a security and we then cancel the *APC notice*, issue an *exemption notice*, or reissue the *APC notice* but for a reduced *APC deposit*, there wouldn't be anything for us to refund. However, we will release the security – or, if appropriate, part of it. How we have to do this is complicated and depends upon whether the property has been sold. If we are going to release a security, we'll explain to you at the time what should happen.

Properties split into different parcels

112 If we have a refund to give to the landowner of the site of an *approved building* but, since we issued the *APC notice*, the land has been split into two or

more parcels with different owners, we will share the refund between the different landowners. We will do this in the way we describe in paragraphs **99** and **100** for splitting the amount of an *APC deposit*.

Property prices

113 When buying or selling the site of an *approved building* after an *APC deposit* has been paid or a security has been given, you should consider who would benefit from any refund before you decide on the price.

If work never starts on the approved building

General

114 If no one starts work erecting the *approved building* or making the site ready for it, then no one has to pay the *APC deposit*.

Building regulations approval cancelled

115 If no one starts work on an *approved building* within three years of the plans being deposited with the council, then **section 32** of the **Building Act 1984** allows the council to cancel the building regulations approval. No one is then allowed to start work on the *approved building* and the *APC notice* will cease to have effect.

116 If you get building regulations approval for an *approved building* that is then cancelled because you haven't started work in time but you still want to build the *approved building*, then you will have to make a fresh application for building regulations approval.

If you decide not to start work on an approved building

117 Once you have building regulations approval for an *approved building* you might decide that you don't want to build it. The landowner is then allowed to give notice to the council saying that they are not going to build the *approved building*. If the landowner does this, then – unless work has already started on making up the *private street* using the *PSWC* – the *APC notice* will cease to have effect.

If you change your mind and decide to start work after all

118 If the landowner gives us notice that you are not going to building the *approved building* but afterwards you change your mind and the landowner then give us notice that you are going to build the *approved building*, then the law obliges us to issue a new *APC notice*.

Refunds

119 We may refund any *APC deposit* paid or release any security given once an *APC notice* for an *approved building* ceases to have effect either:

- because the building regulations approval for the *approved building* has been cancelled; or
- because the landowner has given notice to the council saying the *approved building* isn't going to be built.

However, we won't refund an *APC deposit* or release a security in these situations unless you ask our *highway* adoptions team.

120 We describe the way we will refund any *APC deposit* paid or release any security given in paragraphs **108** to **112**.

When the APC doesn't apply

121 Lots of buildings or extensions to buildings are given building regulations approval so normally we don't get in touch when the *APC* doesn't apply.

Exemption notices

122 Sometimes, when we are allowed to exempt an *approved building* from the *APC*, the exemption will only count if we formally issue you with an *exemption notice*.

Local land charges

123 Anyone doing 'local searches' in connection with buying a property will find out about any 'local land charges' that cover it.

124 The following are local land charges:

- *APC notices*
- *Exemption notices*

- Payments made or securities given to cover *APC deposits*
- Refunds paid and securities released
- Determinations made by the Secretary of State for Transport following an appeal (see paragraphs **103** to **107**)

The APC: Other permissions and approvals required

APC notices, landownership, and works to private streets

125 Getting an *APC notice* doesn't give you the right to do any works to a *private street* that you do not own. You will still need the permission of the landowner of the *street*.

126 If you do not know who owns the *street* and you do the work anyway, then you run the risk of the landowner turning up. You might then have to reinstate the land or pay compensation.

APC notices and works to existing highways

Criminal offence

127 Usually, works to construct or make up a *private street* require work in or to an existing *publicly maintainable highway*, for example to form a tie-in to the wider *highway* network.

128 Doing any works in or to a *publicly maintainable highway* in Kirklees without the written permission of Kirklees Council is a criminal offence, even if it is to construct a tie-in or make a new access.

Section 38 agreements

129 We can write *section 38 agreements* so that they give you the required written permission to do work in or to an existing *publicly maintainable highway*.

Working without a section 38 agreement

130 If you have not entered into a *section 38 agreement* that gives you the required written permission to do work in or to an existing *publicly maintainable highway*, you will need separate, written permission.

Warning!

It is a criminal offence to do any works in or to a *publicly maintainable highway* without the written permission of Kirklees Council

Section 184 agreements

131 If you have not entered into a *section 38 agreement* and only need to construct a tie-in to a *street* that you want to keep private, then an agreement made under **section 184** of the **Highways Act 1980** might be appropriate. This section lets us give you permission to construct a new access or to modify an existing one. We cannot use it to create new *highway*, so it is not suitable if you need to widen an existing *highway*. However, it is a straightforward way to do work on private accesses.

Section 278 agreements

132 If you have not entered into a *section 38 agreement* but your works are too complicated for a *section 184 agreement*, then you will need an agreement made under **section 278** of the **Highways Act 1980**.

Early contact

133 If your proposals will require work in or to an existing *publicly maintainable highway*, then please get in touch our *highway* adoptions team as soon as you can. We can then advise you on the most appropriate agreement to use.

More information

134 We have written a highways guidance note, **Private Works to Existing Highways (Section 184 and 278 Agreements)**, to explain how to get written permission to work in an existing *highway*. This is available on **our highway adoptions webpage**.

APC notices, planning permission, and highways technical approval

APC notices and planning permission

135 The *APC* doesn't have anything to do with planning permission. Getting an *APC notice* doesn't affect whether you need planning permission for your *approved building* and doesn't change any planning permission you have already been given.

APC notices and highways technical approval

136 Issuing someone with an *APC notice* doesn't mean that we approve of their *highway* proposals. We issue *APC notices* because the law says we have to, not because we think that the proposals are acceptable.

137 Regardless of whether we have issued an *APC notice*, we will not adopt any new *streets* as *publicly maintainable highways* unless we have given them *highways technical approval*.

138 We describe *highways technical approval* in more detail in paragraphs **39** to **46**.

Getting highways technical approval before planning permission

139 We do not insist that proposed developments have planning permission before we will give them *highways technical approval*. But, if you get *highways technical approval* for a proposed development and then later on redesign it so that you can get planning permission, the existing *highways technical approval* might not still be appropriate. We would then insist that you make a fresh application for *highways technical approval* for the redesigned proposals.

Getting planning permission before highways technical approval

140 Usually, proposed developments will have planning permission before *highways technical approval* is applied for. If you get planning permission for a proposed development and then later on redesign it so that you can get *highways technical approval*, you should check that it would still comply with the planning permission.

141 Our *highway* adoptions team cannot give advice on how changes to proposed developments might affect existing planning permission.

The APC: How to make up a private street and get your deposit back

Introduction

Making money available

142 As we say in paragraph **11**, the *APC* is a way of making sure that we would have money available should we have to step in to construct or make up a *private street* or *relevant proposed street*. In most cases, we won't have to. But we will keep the *APC notice* in place until we are happy that the *street* is made up to a satisfactory standard and we won't need the money.

143 Whether or not we step in to construct or make up a *private street* or *relevant proposed street*, we need to make sure that:

- the *street* is constructed or made up in a timely fashion

- any *streets* we adopt would be to a suitable standard

If we don't have to step in

144 If we don't step in to construct or make up a *private street* or *relevant proposed street*, then the *APC* doesn't affect who can do the work required. Neither does it affect how those works are arranged or paid for or whether the *street* can become a *publicly maintainable highway*.

145 Of course, as long as the *APC notice* is still in place, the landowner has the legal responsibilities we outlined in paragraph **54** and might still have to pay us the *APC deposit*.

Developers' and landowners' aims when doing works

146 Once they have been issued with an *APC notice*, most developers and landowners want to avoid paying the *APC deposit* or, if they have to pay it, get it back as soon as they can. In addition, they usually want to make sure that:

- they don't break the law on when they are allowed to start work
- they minimize the amount of any deposit or bond they have to give to the council
- they can stick to their works programme
- their works would be acceptable to the council
- they can get adopted as a *publicly maintainable highway* the *streets* they want to get adopted
- they can keep private the *streets* they want to keep private

How to construct or make up a street covered by an APC notice and get your deposit back

147 Whether developers or landowners want to get their *private streets* adopted or keep them private, there are three main ways to construct or make up a *private street* covered by an *APC notice* and then get the *APC deposit* back. These are:

- use a *section 38 agreement* to get the *private street* adopted
- get the *private street* adopted without using a *section 38 agreement* but with an *APC notice* still in place
- keep the *private street* private with an *APC notice* in place until the works are completed to our satisfaction

We outline these ways in the flow charts on page **19** and describe them in the following paragraphs.

Section 37 of the Highways Act 1980

148 **Section 37** of the **Highways Act 1980** provides a method for getting a *private street* adopted as a *publicly maintainable highway*. However, as we explain in paragraphs **178** to **188**, we recommend that you do not rely on this method.

Using a section 38 agreement to get a private street adopted

149 For most developments, the easiest way to get new *streets* adopted is to use a *section 38 agreement*.

150 We outline the method for getting a *private street* adopted using a *section 38 agreement* in **Flow Chart E** on page **19**.

Section 38 agreements signed after an APC notice is issued

151 If a *section 38 agreement* is signed after we have issued an *APC notice* for a *street*, we will cancel the *APC notice*. We will then refund any *APC deposit* paid or release any security given, as described in paragraphs **108** to **112**.

How to use a section 38 agreement to get a private street adopted

152 *Section 38 agreements* are not covered by this highways guidance note. Instead, we have prepared a separate highways guidance note, **Section 38 Agreements for Highway Adoptions**, which explains how to use a *section 38 agreement* to get made-up *private streets* adopted by us as *publicly maintainable highways*. This is available on **our highway adoptions webpage**.

Getting a private street adopted without a section 38 agreement

Small-scale works

153 For small-scale works, many developers find it easier to pay the *APC deposit* than to enter into a *section 38 agreement*.

154 Once you've finished the works, the owner of the land where the made-up *street* is can then use a deed of dedication to dedicate the *street* as a *highway* and to agree to it becoming *publicly maintainable highway*. We will then cancel the *APC notice*.

Section 228 and adoption

155 If you don't own the *street* and don't know who does, then we might still be able to adopt the *street*

as *publicly maintainable highway* using **section 228** of the **Highways Act 1980**.

156 Usually, we won't try to use **section 228** unless there are exceptional circumstances. If you don't know who owns a *street*, you would have to demonstrate to us that you have tried – using all reasonable means – to find out who the owner is.

157 We explain **section 228** in more detail in **Annex D**.

Suitable streets

158 In **Annex D** we describe which *streets* might be suitable for constructing or making up without a *section 38 agreement*.

Fees

159 We will charge a fee for the technical review of your proposals, for inspecting your works on site, and to cover our admin and legal costs. This will be 10% of the amount of the *APC deposit*.

Refunds

160 Once we have cancelled the *APC notice*. We will then refund any *APC deposit* paid or release any security given, as described in paragraphs **108** to **112**. We won't, of course, refund our fees.

How to get a private street adopted without a section 38 agreement

161 In **Flow Chart F** on page **19** we outline the method for getting a *private street* adopted without a *section 38 agreement*. We describe this method in more detail in **Annex D**.

Works to existing publicly maintainable highways

162 Even if we are happy for you to pay the *APC deposit* instead of entering into a *section 38 agreement*, you will still need separate, written permission to do any work in or to an existing *publicly maintainable highway*. We explain this in more detail in paragraphs **127** to **134**.

Early discussions

163 If you are thinking of getting a *private street* or *relevant proposed street* adopted without using a

section 38 agreement, then please get in touch with our *highway* adoptions team as soon as you can. We can then advise you whether we would require a *section 38 agreement*.

Keeping private streets private

New streets

164 We encourage developers to get the new *streets* in their developments adopted as *publicly maintainable highways*. However, we appreciate that sometimes they wish to keep their new *streets* private.

Proposals to keep a private street private

165 When we consider proposals to construct or make up a *private street* but then keep it private, we try to make sure that:

- we avoid the potential problems with *private streets* we describe in paragraphs **24** to **27**
- we protect the council's interests we describe in paragraphs **28** to **33**

166 Our main concerns are to make sure that the *private street* would function effectively and safely and would not badly affect neighbouring *premises* or nearby *publicly maintainable highways*.

167 We also have to make sure that no one could use **section 37** of the **Highways Act 1980** to force us to adopt a below-standard *private street* as a *publicly maintainable highway*.

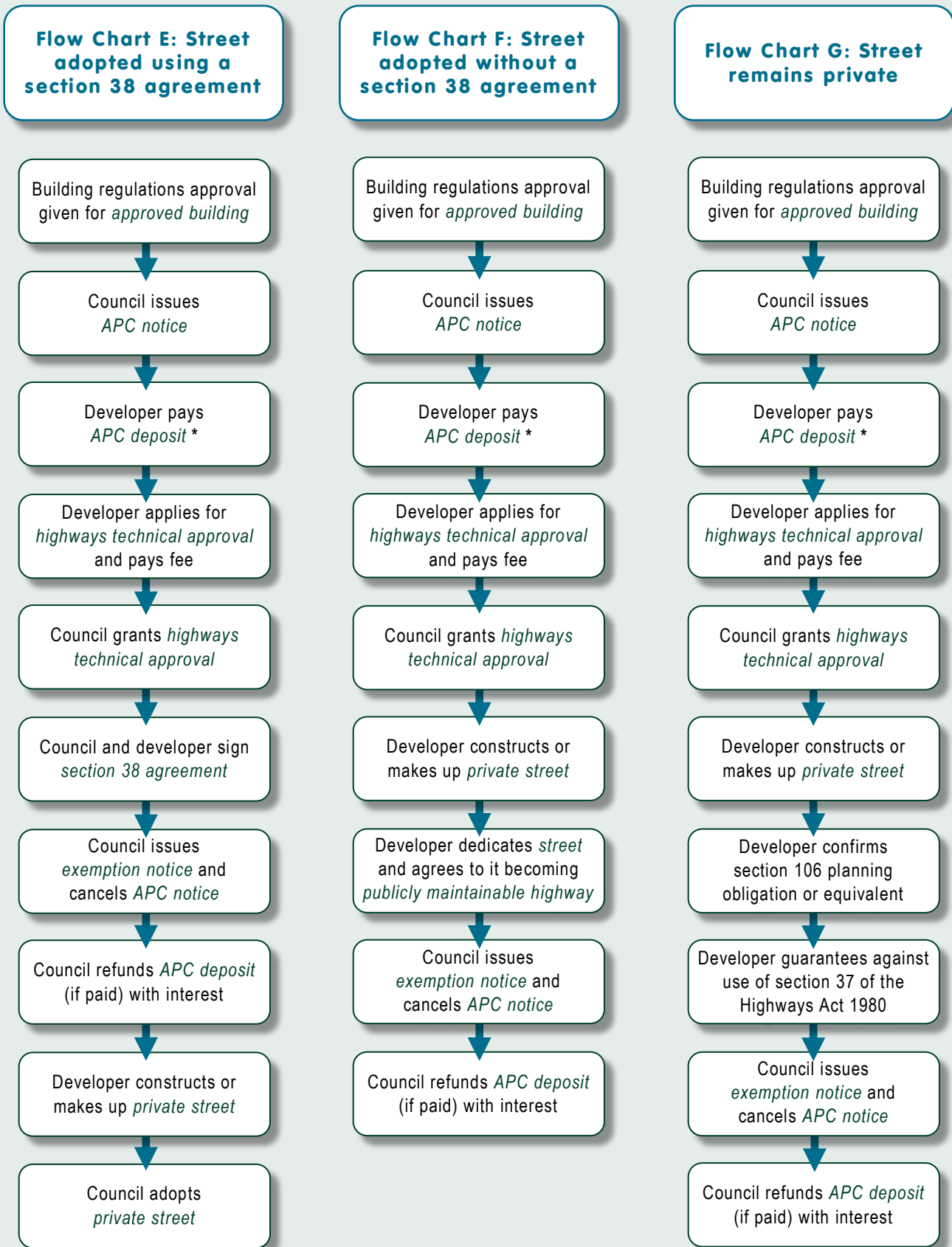
168 **Section 37** is a way of getting a *street* that has already been constructed or made up adopted as *publicly maintainable highway*. We explain it in more detail in paragraphs **178** to **188**.

Exemption notices

169 If you want to make up a *private street* or *relevant proposed street* and then keep it private, the law allows us to issue you with an *exemption notice* and to cancel the *APC notice*.

170 We will not issue an *exemption notice*, cancel the *APC notice*, refund any *APC deposit* paid, or release any security given for a *private street* that is to be kept private unless we are happy that:

- you have made up the *street* to 'our satisfaction'



* When required to start work on the approved building

- we will be protected against anyone using **section 37** to force us to adopt a below-standard *private street*

Fees

171 We will charge a fee for the technical review of your proposals, for inspecting your works on site, and to cover our admin and legal costs. This will be 10% of the amount of the *APC deposit*.

Refunds

172 Once we have issued an *exemption notice*, we will cancel the *APC notice*. We will then refund any *APC deposit* paid or release any security given, as described in paragraphs **108** to **112**. We won't, of course, refund our fees.

How to keep a private street private

173 We outline in **Flow Chart G** on page **19** the method to use if you want to make up a *private street* or *relevant proposed street* and then keep it private.

174 In **Annex E** we explain how to apply for an *exemption notice* or to cancel the *APC notice* if you wish to keep a *private street* private.

Works to existing publicly maintainable highways

175 Even if we agree to you constructing or making up a *private street* without getting it adopted, you will still need separate, written permission to do any work in or to an existing *publicly maintainable highway*. We explain this in more detail in paragraphs **127** to **134**.

Entrance junctions and bellmouths

176 If your proposals include a new connection onto an existing *publicly maintainable highway*, then you might require a *section 38 agreement* for the entrance junction or bellmouth. We explain *section 38 agreements* in more detail in paragraphs **149** to **152**.

Early discussions

177 If you want to make up a *private street* or *relevant proposed street* and then keep it private, please get in touch with our *highway* adoptions team as soon as you can. We can then work with you to

decide what would be a suitable standard for your *street*.

Section 37 of the Highways Act 1980

Introduction

178 **Section 37** of the **Highways Act 1980** can be used to get *private streets* adopted as *publicly maintainable highway*. It is not used very often as relying on it can be risky for the landowner.

How section 37 works

179 Instead of using a written agreement between a landowner and Kirklees Council, **section 37** works by a landowner giving notice to us that they want a 'way' adopted as a *publicly maintainable highway*. The section then sets out how we have to respond.

180 As there isn't a written agreement, there is potential for us to disagree with a landowner about whether a way would be suitable for adoption or what would be required to make it suitable. **Section 37** therefore allows both us and the landowner to appeal to a magistrates' court.

Timing

181 **Section 37** can only be used after a *private street* has been constructed or made up. However, it doesn't have to be used straight away, it may be used long after the works have finished.

Risks

182 The potential for disagreements between us and landowners and the involvement of the magistrates' court introduces a lot of uncertainty and risk:

- A landowner might end up building houses that do not have direct access to a *publicly maintainable highway*.
- A landowner might pay to get a *private street* constructed or made up without any guarantee that it would then be accepted by us for adoption as *publicly maintainable highway*.

183 If a newly constructed or made-up *private street* is offered for adoption using **section 37** but is unsuitable for adoption as *publicly maintainable highway*, then it is unlikely that it would be

appropriate for us to issue the landowner with an *exemption notice* for it.

Use of section 37

184 Because of the above risks, we recommend that, if you want to get a *private street* adopted, you don't rely on using [section 37](#). Instead, you should use either a *section 38 agreement* or one of the other methods we describe in this highways guidance note.

Protection against misuse

185 As we say in paragraph **179**, instead of using an agreement between the landowner and the council, [section 37](#) works by a landowner giving notice to the council that they want a *street* adopting. This means that a landowner could construct a *street* and then serve notice on us to adopt it when we haven't been given the opportunity to thoroughly review the design or inspect the works done on site.

186 If we haven't reviewed the design or inspected any works done, there is a risk that we could be forced to adopt a below-standard *street* as a *publicly maintainable highway*. Therefore, where a *street* is not

going to be adopted using a *section 38 agreement* or one of the other methods we describe in this highways guidance note, we have to make sure that no one could use [section 37](#) to force us to adopt it.

Protection against misuse: our preferred way

187 Our preferred way to protect the council against the potential misuse of [section 37](#) is:

- for the landowner to sign a deed stating that they would not use [section 37](#); and
- for the sale deeds of the *approved building* to include a covenant that will prevent any future owners from using [section 37](#) and will be enforceable by the council under [section 33](#) of the **Local Government (Miscellaneous Provisions) Act 1982**.

More information

188 The Department for Transport has published an advice note **Highway Adoptions: The adoption of roads into the public highway (1980 Highways Act)** which gives advice on the various ways that new and existing *private streets* can be adopted as *publicly maintainable highways*. This includes advice on using [section 37](#).

The APC: Already made-up private streets

Introduction

189 If we have issued you with an *APC notice* for a *private street* that you've already made up, then you can choose to either:

- keep it private and try to get the *APC notice* cancelled; or
- try to get it adopted as *publicly maintainable highway*.

Adoption as publicly maintainable highway

190 If you've already made up a *private street* but it's not to a standard suitable for adoption as *publicly maintainable highway*, then the easiest way to get it adopted would probably be to use a *section 38 agreement*.

191 If you have already made up the *private street* to a standard suitable for adoption as *publicly*

maintainable highway, then it might be feasible for us to adopt it without a *section 38 agreement*.

Early contact

192 If we have issued you with an *APC notice* for a *private street* that you've already made up and you would like us to adopt it as a *publicly maintainable highway*, then please get in touch with our *highway adoptions team* as soon as you can. We can then advise you on the most appropriate method to use.

Adoption with a section 38 agreement

193 We explain in paragraphs **149** to **152** how to use a *section 38 agreement* to get a proposed *private street* adopted as *publicly maintainable highway*. When you've already made up a *private street*, we use a similar process but we calculate our fees differently.

Fees

194 Usually, our fees for *section 38 agreements* are 10% of our estimated costs if we had to step in to construct or make up the *private street* to a suitable standard. If you've already made up – or partly made up – the *street*, then our construction costs would be much lower. But our legal and admin costs would be similar. Therefore, we will charge you 10% of the amount it would have cost us to do the works if nothing had already been done.

Adoption without a section 38 agreement

195 We explain in paragraphs **153** to **163** which *private streets* might be suitable for adoption without a *section 38 agreement* and how to get one adopted. We use a similar process when you've already made up a *private street*, but we calculate our fees differently.

Fees

196 When we agree to you trying to get your *private street* adopted without using a *section 38 agreement*, we will charge a fee for reviewing and inspecting the proposed works and to cover our admin and legal costs. Usually, this is 10% of the amount of the *APC deposit*.

197 If you've already made up – or partly made up – a *street*, then our construction costs and the *APC deposit* would be much lower. But our legal and admin costs would be similar. Therefore, we will charge you 10% of the amount it would have cost us to step in and do the works if nothing had already been done.

Keeping an already made-up private street private

198 We explain in paragraphs **164** to **177** how to make up a *private street* and keep it private but still get your *APC deposit* back. We follow the same procedure for *private streets* that have already been made up, but we calculate our fees differently.

Fees

199 When we agree to you trying to make up a *private street* or *relevant proposed street* and then keep it private, we will charge a fee for reviewing and inspecting the proposed works and to cover our admin and legal costs. Usually, this is 10% of the amount of the *APC deposit*. However, if you've already made up – or partly made up – a *street*, then our construction costs and the *APC deposit* would be much lower. But our legal and admin costs would be similar. Therefore, we will charge you 10% of the amount it would have cost us to step in and do the works if nothing had already been done.

The Private Street Works Code

Introduction

200 As we say in paragraphs **11** to **16**, the *APC deposit* is there to give us the money we would need should we have to step in to construct or make up the *private street* or *relevant proposed street* to a satisfactory standard. If we had to do this, we would have to use the *Private Street Works Code* or *PSWC*.

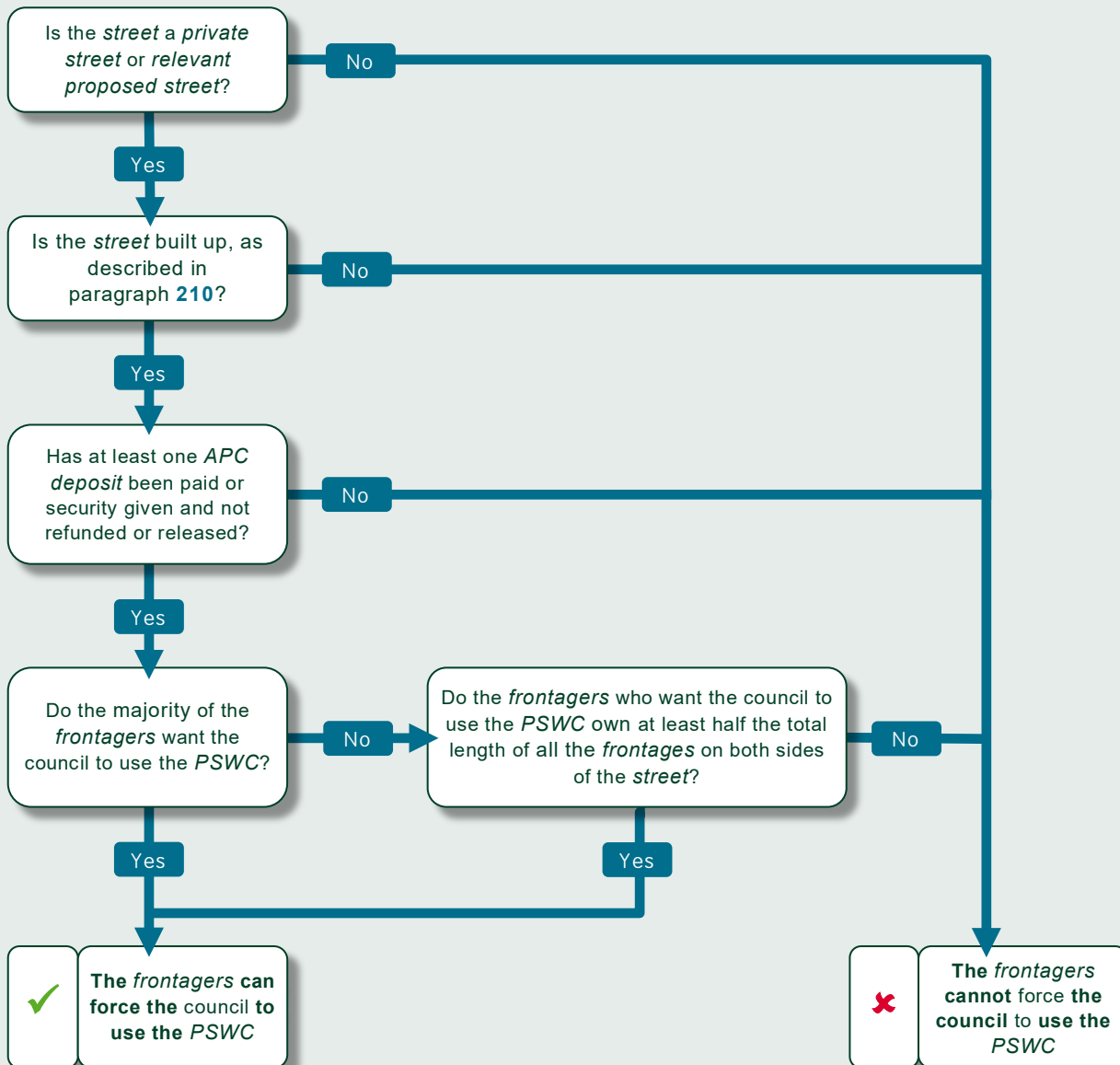
201 The *PSWC* sets out how Kirklees Council – as the local *highway* authority – may construct or make up the *private street* or *relevant proposed street* to a satisfactory standard even if we don't own the *street*. It also allows us to make the *frontagers* pay the costs even if they don't want to.

202 Because the *PSWC* allows us to do the works and charge the *frontagers* even if we don't own the *street* and even if the *frontagers* don't want to pay, it includes various legal safeguards to make sure that we treat them and the landowner of the *street* fairly.

Use

203 We don't often use the *PSWC*. It is very complicated to use and doesn't guarantee that we would be successful in getting a *private street* constructed or made up. In addition, its use can cause neighbours to fall out with each other.

Flow Chart H: Right of frontagers to force use of the PSWC



The PSWC and existing publicly maintainable highways

204 We can only use the PSWC to construct or make up private streets or relevant proposed streets. We cannot use it to do works to existing publicly maintainable highways, except where we need to make a tie-in or a new access.

Adoption as publicly maintainable highway

205 Usually, when we use the PSWC, we can choose whether to adopt the newly constructed or made-up private street as publicly maintainable

highway. The exception is that, when the frontagers have a legal right to force us to use the PSWC, they also have a legal right to force us to adopt the private street.

206 We say more about this legal right of the frontagers in paragraphs 210 to 213.

When we'll use the PSWC

207 Before we agreed to use the PSWC, we would make sure that there weren't alternative ways of getting a private street constructed or made up.

208 Except where *frontagers* have a legal right to force us to use the *PSWC*, we will only use the *PSWC* if:

- the *frontagers* support its use; and
- we can construct or make up the *private street* to a satisfactory standard; and
- the newly adopted *publicly maintainable highway* would conform to our highways guidance note **Highway Adoptions Criteria**.

Highways guidance notes

209 All our highways guidance notes are available on [our highway adoptions webpage](#).

Right of frontagers to force us to use the *PSWC*

210 In some situations, *frontagers* on built-up *private streets* have the legal right to force the council to use the *PSWC*. (By 'built-up' we mean that the total length of building *frontages* on both sides of the *street* is at least half of the total length of all the *frontages* on both sides of the *street*.)

211 If you have the legal right to force the council to use the *PSWC*, you also have the right to force us to adopt the newly constructed or made-up *private street* as *publicly maintainable highway*.

212 To see whether you have the legal right to force the council to use the *PSWC*, use **Flow Chart H** (page **23**).

Part of a street

213 If **Flow Chart H** doesn't show that you can force the council to use the *PSWC*, you might still be able to do so for just part of the *street*. You can only do this if the part of the *street* is at least 100 yards (91.44 m) long and the *frontagers* on that part agree to it being treated separately.

What to do if you want us to use the *PSWC*

214 This highways guidance note only gives an overview of the *PSWC*. If you want us to use the *PSWC* to get a *private street* constructed or made up and then adopted as a *publicly maintainable highway*, then please get in touch with our *highway adoptions team* as soon as you can. We can then give you further advice about this matter.

Annex A – Road Safety Audits

Road user safety

A1 As the local *highway* authority, we have a responsibility to assess how new *streets* might affect the safety of users. We do this by requiring that *road safety audits* or *RSAs* are done at various stages of a development's progress. In *RSAs*, the road safety implications are formally assessed or 'audited' by qualified and experienced experts who are independent of the designers and not involved with the design.

Our requirements

A2 We require that the road safety of all proposals for new *publicly maintainable highway* or for alterations to existing *publicly maintainable highways* are assessed using *RSAs*.

GG 119 – Road Safety Audit

A3 Our requirements for *RSAs* are based upon those of National Highways (formerly Highways England) in the [Design Manual for Roads and Bridges](#) document **GG 119 – Road Safety Audit**.

A4 **GG 119** covers *RSAs* at four different stages. We apply these as follows:

- **Stage 1** – 'Completion of preliminary design' (application for planning permission)
- **Stage 2** – 'Completion of detailed design' (application for *highways technical approval*)
- **Stage 3** – 'Completion of construction'
- **Stage 4** – 'Post-opening monitoring'

Stage 3 RSAs

Adoption without a section 38 agreement

A5 If we agree that your proposed *street* is suitable for adoption without a *section 38 agreement*, then we would not usually insist on a stage 3 *RSA*. However, it is occasionally easier to see potential problems with a *street* only after it has been made up. When this is the case, we will insist on a stage 3 *RSA*.

Stage 4 RSAs

A6 Only some developments would require a stage 4 *RSA*; most would not. One would be required if we decided during the detailed assessment that part of a proposal was so complex or unusual that it should be assessed once it had been in use for a while.

Residential developments

A7 It is unlikely that a residential development would include any features complex or unusual enough to require a stage 4 *RSA*.

Adoption without a section 38 agreement

A8 If a development was so complex or unusual that it required a stage 4 *RSA*, then we would not consider adopting it using the procedure we describe in **Annex D** for adoption without a *section 38 agreement*.

Audit teams

A9 We require that audit teams are independent of the design teams: they may not include anyone involved with the design.

RSA documentation

A10 In line with **GG 119**, we require that:

- the developer writes an 'audit brief'
- the auditors state their findings in an 'audit report'
- the designers review the audit report and write a formal audit 'response report' covering any problems and recommendations raised
- where the designers and auditors disagree about the findings, the designer writes an audit 'exception report' covering the contentious items

Kirklees Council RSA services

A11 Our road safety team can do *RSAs* for developers. If you wish to use this service, you should contact our *highway* adoptions team.

Annex B – Safety and health in design and construction

The CDM Regulations

Introduction

B1 As we explain in paragraphs 47 to 50, the **CDM Regulations** cover the way developments are designed and constructed. Their aim is to make sure that construction projects are safe to build, use, and maintain while offering developers good value. They try to reduce dangers to employees and members of the public by designing out hazards and ensuring that construction projects are suitably managed and maintainable for the future.

How the CDM Regulations work

Duty holders

B2 The **CDM Regulations** list those people involved with a construction project who are best placed to make sure that it is run safely. They then give those people legal duties to make sure that they try to make it run safely. These people are often called 'duty holders'. They are:

- The CDM client
- The CDM principal designer
- Other CDM designers
- The CDM principal contractor
- Other CDM contractors

CDM principal designer

B3 Most developments are prepared by a team of designers. The CDM principal designer's main role is to be the captain of this team. They have to ensure that the various parties work together so that safety and health-related matters are taken into account and not overlooked by anyone thinking that they are someone else's responsibility.

Health and safety file

B4 The CDM principal designer is legally obliged to prepare a 'health and safety file'. This has to contain all the safety and health information:

- that the other designers need to do their jobs properly

Warning!

If you have been given legal duties under the CDM Regulations and you fail to do them, you might be committing a criminal offence

- that the contractor will need during construction
- that we will need if we adopt the *private street* and have to maintain or repair it

CDM designers

B5 All CDM designers have a legal duty to design out 'foreseeable risks' to safety or health. Where it is not possible to eliminate these risks, the designer then has a legal duty to:

- try to reduce or control the risks
- inform the principal designer about those risks
- ensure that the health and safety file is appropriately updated

In addition, all CDM designers have to cooperate with the other parties involved with the design or construction of a development

B6 On a typical development project that includes *private streets*, the CDM designers include those responsible for the design, preparation, or specification of the following:

- Buildings
- Earthworks, ground improvement or land remediation measures, treatment of mining features
- Flood routing and flood protection or mitigation works
- Foul and surface water drainage
- Landscaping or public open space
- Master planning
- Proposed *highways* – including associated *highway* drainage and *street* lighting
- Structures
- Utility apparatus – including broadband, electricity, gas, telecoms, and water

Kirklees Council as a CDM designer

B7 When we review a proposed *private street* to decide whether to give it *highways technical approval*, we often give advice – particularly if the proposals are not acceptable at first. When we give advice, we count as a CDM designer for **the CDM Regulations**.

Construction-phase plan

B8 The CDM principal contractor is legally obliged to prepare a 'construction-phase plan'.

Application to highway adoptions in Kirklees

B9 We expect all proposed *private streets* and changes to existing ones to be designed and built in accordance with **the CDM Regulations**. If, at any time, we thought that a landowner or developer was not complying with their legal obligations under **the CDM Regulations**, then we could decide that it

would be unacceptable for us to have any agreements with them.

CDM and highway adoptions inspections

B10 If at any time we thought that a CDM principal contractor was not complying with their legal obligations under **the CDM Regulations**, then we could decide that it would be unsafe to allow our *highway adoptions inspectors* onto the development site.

More information

B11 We have prepared a highways guidance note **Highway Adoptions and the CDM Regulations**, which gives more information on how the regulations affect *highway adoptions* in Kirklees. This is available on **our highway adoptions webpage**.

B12 The **Health and Safety Executive (HSE)** and the **Construction Industry Training Board (CITB)** have prepared online guidance, see:

- **HSE CDM guidance**
- **CITB CDM guidance**

Annex C – Highway inspections

Highway inspections

Exemption notices and cancellation of APC notices

C1 We will issue you with an *exemption notice* and cancel the *APC notice* if you have constructed or made-up a *private street* to our satisfaction and you want to either:

- get it adopted without a *section 38 agreement*; or
- keep it private.

However, we have to first check whether you have made up the *street* to our satisfaction. We do this by inspecting your works.

Timing of developers' works and highway adoption inspections

C2 We need to inspect your works as they are built. To allow us to do this, you have to inform our *highway* adoptions team in time of the specific work taking place on site.

C3 If you don't tell our *highway* adoptions team in time about your planned works and, as a consequence, we cannot inspect them, then any work you do would be at your own risk as it could be unacceptable. If it is unacceptable, we will not pay to correct, replace, or redo it.

Purpose of highway adoption inspections

C4 The reason why we inspect developers' works is to protect our interests, particularly when we are planning to adopt a *private street*. We don't inspect

to check for compliance with developers' own requirements.

Other inspections by Kirklees Council

C5 As well as the local *highway* authority, Kirklees Council is also the lead local flood authority, local building control authority, and local planning authority. All these different roles require us to inspect development sites. This can sometimes cause confusion for developers.

C6 The inspections we do for *highway* adoption purposes are different to those that we do in our other roles. Developers should remember that:

- our *highway* adoption inspectors cannot give advice on matters relating to building control, flooding, or planning
- building control, flooding, and planning inspectors cannot give advice on matters relating to *highway* adoptions

In addition, our *highway* adoption inspectors do not inspect utility works governed by the **New Roads and Street Works Act 1991** (NRSWA). Likewise, our NRSWA inspectors do not inspect *highway* adoption-related works.

Other limitations of highway adoption inspections

C7 Our *highway* adoption inspectors will work with developers and offer advice, but they will not:

- approve work
- redesign proposals
- consider the cost or time implications for developers

Annex D – How to get a private street adopted without a section 38 agreement

Background: Suitable streets and preconditions

Overview

D1 We give an overview of how to get a *private street* adopted without a *section 38 agreement* in paragraphs 153 to 163 and in **Flow Chart F** on page 19.

Suitable streets

General

D2 For small-scale works we are usually happy for you to pay the *APC deposit* instead of entering into a *section 38 agreement*. However, you can only use this method to make up the *private street* described in the *APC notice*. It cannot be used to make up a *private street* that isn't *fronted* onto by your *approved buildings*.

Landownership and works

D3 We cannot give you permission to construct or make up a *private street* or *relevant proposed street* on land that you do not own. If you do not own the land, you will have to get permission from the landowner.

Your proposed works

D4 Whether we will insist that you use a *section 38 agreement* for your proposed *publicly maintainable highway* will depend upon how long your works are likely to take and how complicated they are.

D5 We will usually insist that you use a *section 38 agreement* if:

- your proposed works are likely to take longer than six months to construct
- your proposed *publicly maintainable highway* contains any of the features listed in the box above right
- your proposed *publicly maintainable highway* is so complex or unusual that it requires a stage 4 *RSA*

Unsuitable streets

Streets are unsuitable for adoption without a section 38 agreement if they contain any of the following

- More than 150 m² of new carriageway
- More than 30 m of new footway or footpath
- More than 30 m of new *highway* carrier drain
- New *highway* drainage works that include man-holes, flow control devices, attenuation tanks, soakaways, outfalls, above ground SuDS features, or carrier drains larger than 225 mm internal diameter
- New *highway* drainage works outside the *private street*
- Significant earthworks or ground improvement works
- Works to made ground or contaminated ground
- Works or special measures required by the Environment Agency or the Coal Authority
- New traffic signal installations or works to existing traffic signal installations
- *Highway* structures
- *Street* trees or areas of *highway* landscaping
- Private utility apparatus

Preconditions

D6 We will not agree to adopt a *private street* without a *section 38 agreement* unless:

- The *private street* has *highways technical approval*.
- You either own the land where the *private street* will be constructed or made up or you have the permission of the landowner.
- You have finished the work required to construct or make up the *private street*.
- We have inspected your works and are satisfied that the *private street* has been constructed or made up to 'our satisfaction'.

- Either you have finished any related works to existing *publicly maintainable highways* or suitable legal arrangements are in place to guarantee that these will be done.

We explain these preconditions in more detail in the following paragraphs.

Highways technical approval

D7 As we explain in paragraphs **39** to **46**, we have very onerous responsibilities for *publicly maintainable highways*. Therefore, we require that proposed *publicly maintainable highways* have *highways technical approval* before we will agree to them.

Required standards

D8 We give advice on the required standards of new *publicly maintainable highways* in our highways guidance note **Requirements of New and Improved Roads and Paths**. This is available on [our highway adoptions webpage](#).

Your works and highway inspections

D9 To make sure that the *private street* has been constructed or made up to a suitable standard for us

to adopt it as *publicly maintainable highway*, we need to inspect it.

D10 We give more information about *highway* inspections in **Annex B**.

Entrance works and works to existing publicly maintainable highways

D11 As we say in paragraph **127**, works to construct or make up a *private street* usually require work in or to an existing *publicly maintainable highway*. Therefore, before we will agree to adopt a *private street* without a *section 38 agreement*, we need to make sure that either:

- any related works to existing *publicly maintainable highways* have been finished; or
- suitable legal arrangements are in place to guarantee that any related works will be done in a timely fashion.

D12 We give more information about doing private works to existing *publicly maintainable highways* in paragraphs **127** to **134**.

Procedure

Early discussions

D13 As we say in paragraph **163**, if you are thinking of getting a *private street* or *relevant proposed street* adopted without using a *section 38 agreement*, then please get in touch with our *highway* adoptions team as soon as you can. We can then advise you whether we would require a *section 38 agreement*.

Application and fee

D14 If we have issued you with an *APC notice* and you want to get the *private street* adopted without a *section 38 agreement*, then you need to:

- formally apply to us
- pay us the non-refundable fee

D15 In your application, you need to say that you want to get a *private street* adopted without a

section 38 agreement. In addition, your application should:

- contain the additional information that we ask for in **Annex F**
- conform to the requirements we've set out in **Annex F**

Supporting documents

D16 In your application, you should include everything that we will need to technically review your proposals. In particular, you should send us the supporting documents listed in the box overleaf.

Highway adoption drawing

D17 You will have to include in your application a '*highway* adoption drawing', which should show exactly what you would like us to adopt. This drawing should conform to the requirements we've set out in our highways guidance note **Highway Adoption**

Drawings. This is available on [our highway adoptions webpage](#).

Detailed design information

D18 In your application you should also send us the detailed design information.

D19 In the table at the end of this annex we list the drawings you might need to show this. The design information we require will depend upon the size and complexity of your proposed works; it is unlikely that you will need all the drawings shown. For a typical, simple development, you might be able to fit all the design information we require onto a single drawing.

D20 The detailed design information should be shown on a different drawing to the *highway* adoption drawing.

Timeliness

D21 If you don't send us the information we need at the right time, it will increase the time it takes us to review your proposals. In addition, it may delay us paying you any refund that you are due.

Assigned case engineer

D22 Once our *highway* adoptions team has received confirmation that your fee has been paid, we will assign a case engineer to deal with your application. The case engineer will be our single point of contact for all *highway* matters relating to your *private street*.

D23 The first thing our case engineer will do is introduce themselves to you.

Highways technical review and assessment

D24 After we have received your application, our case engineer will start the *highways* technical review of your proposals.

D25 If we give your proposals *highways technical approval*, we will then assess whether they meet our other preconditions.

Supporting documents required

Drawings

- *Highway* adoption drawing
- Detailed design drawings

Planning assessments, statements, and plans

- The design and access statement
- The drainage strategy and flood risk assessment
- The transport statement and transport assessment or travel plan

RSAs

- Stage 1 and stage 2 *RSA* briefs (except where these are reproduced in the *RSA* reports)
- Stage 1 and stage 2 *RSA* reports
- Stage 1 and stage 2 *RSA* response reports
- Exception reports

Geoenvironmental or geotechnical features and earthworks

- Report of the geoenvironmental and geotechnical site investigation, including the interpretation of the findings
- Coal mining risk assessment report
- Correspondence with the Environment Agency and the Coal Authority

Construction

D26 As we say in paragraph **D9**, we will inspect your works during construction.

Provisional certificate and maintenance period

Maintenance periods

D27 We will not adopt a *street* straight away after you have finished it. Instead, we will require you to look after it for a minimum twelve months. We call this a 'maintenance period'.

D28 The maintenance period starts when we issue you with a 'provisional certificate'.

Provisional certificates

D29 We will not issue you with a provisional certificate unless:

- The *street* has been made up to the design that was given *highways technical approval*
- All remedial works have been completed
- The *street* and associated drains have been cleaned of accumulated debris and construction waste
- All adoptable *highway* drains have been surveyed by CCTV
- Any prospective public sewers in the *street* have been installed to the satisfaction of Yorkshire Water (the local statutory sewerage undertaker)
- You have an agreement with Yorkshire Water that they will adopt any prospective public sewers in the *street*
- All the required utility apparatus has been installed
- You have asked our *highway* adoptions team to issue you with a provisional certificate

Inspections and checks

D30 Once you have asked us to issue you with a provisional certificate, we will inspect the *street* and check whether you have met our other preconditions.

D31 If your *street* passes the inspection and you have met our other preconditions, then we will issue you with a provisional certificate. However, we will not reduce the amount of the *APC deposit* or cancel the *APC notice*.

Pre-adoption inspections and checks

D32 Twelve months after we have issued you with a provisional certificate – if your *street* is still in a good condition – you should ask our *highway* adoptions team to do a pre-adoption inspection.

D33 If your *street* passes the inspection, then we will check that the following preconditions have been met:

- Any sewers in the *street* have been adopted by Yorkshire Water
- You have sent us the up-to-date health and safety file – as required by [the CDM Regulations](#)

- You have sent us as-built drawings and drainage schedules for the *street*
- You have paid us any outstanding fees or charges for any work we've done for you in connection with your development

Adoption

D34 If you have met the above preconditions and your *street* is still in a good condition, then we will agree to you using a deed of dedication to dedicate the *street* as a *highway* and to agree to it becoming *publicly maintainable highway*. We will then cancel the *APC notice*.

Section 228 and adoption

D35 As we say in paragraphs **155** to **157**, if you don't own the *street* and don't know who does, then we might still be able to adopt the *street* as *publicly maintainable highway* using [section 228](#) of the [Highways Act 1980](#). However, we won't try to use [section 228](#) unless you demonstrate to us that you have tried – using all reasonable means – to find out who the owner is.

D36 We explain [section 228](#) in more detail in paragraphs **D39** to **D44**.

Refunds

D37 Once we have adopted a made-up *street* as *publicly maintainable highway*, we will cancel the *APC notice*. We will then refund any *APC deposit* paid or release any security given, as described in paragraphs **108** to **112**. We won't, of course, refund our fees.

End of maintenance period

D38 Regardless of how long it takes, the maintenance period will not end until we adopt your *street*.

Section 228 and adoption

D39 [Section 228](#) of the [Highways Act 1980](#) gives us a way to adopt *streets* that have been made-up as *publicly maintainable highways*. However, there is no guarantee that we would be successful every time we tried to use it.

How section 228 works

D40 After *street works* have been done in a *private street*, we may declare the *street* to be a *publicly maintainable highway*. We do this by posting a notice – which we have to keep in place for one month – in the *street* saying that we intend to declare it to be a *publicly maintainable highway*. What happens next depends upon whether anyone objects to our notice.

If no one objects

D41 If no one objects within the month-long notice period, the *street* becomes a *publicly maintainable highway* at the end of the notice period.

If the landowner objects

D42 If the landowner (or the majority of landowners if there is more than one) of the *private street* objects within the month-long notice period, then the *street*

won't become a *publicly maintainable highway* unless we appeal to a magistrates' court and the court agrees with us. If we are going to appeal, we have to do so within two months of the end of the month-long notice period.

D43 If we don't appeal or if we appeal and the magistrates' court doesn't agree with us, then the *street* will remain a *private street* and won't become a *publicly maintainable highway*.

More information

D44 The Department for Transport has published an advice note **Highway Adoptions: The adoption of roads into the public highway (1980 Highways Act)** which gives advice on the various ways that new and existing *private streets* can be adopted as *publicly maintainable highways*. This includes advice on using **section 228**.

Table of detailed design information

Drawing	Coverage	Comments
1. General arrangement	<ul style="list-style-type: none"> ■ Any entrance works ■ Existing <i>streets</i> the development would gain access from or front onto – including road numbers and <i>street</i> names ■ Road centrelines and chainages ■ Proposed road numbers/references ■ Proposed buildings and plots, with plot numbers/references 	<ul style="list-style-type: none"> ■ None
2. Existing topography and site conditions	<ul style="list-style-type: none"> ■ Existing site topography ■ Locations of trial pits, boreholes, and other ground investigation works ■ Existing watercourses and other water bodies 	<ul style="list-style-type: none"> ■ This should show the situation before proposed site clearance ■ The date of the survey should be stated ■ The date the information was obtained should be stated
3. Existing utility apparatus	<ul style="list-style-type: none"> ■ Existing utility apparatus in the site or in <i>highways</i> near the site – including above-ground cabinets, broadband cables, drains or sewers, electricity cables, gas pipes, telecoms cables, and water supply pipes 	<ul style="list-style-type: none"> ■ Only 'mains' should be shown; individual service connections are not required ■ The date the information was obtained should be stated

Table of detailed design information

Drawing	Coverage	Comments
4. Existing highways	<ul style="list-style-type: none"> ■ Boundaries of existing <i>highways</i> on or near the site ■ Public rights of way (PROWs) on or near the site ■ The status of any <i>streets</i> that cross or access the site 	<ul style="list-style-type: none"> ■ Information on the boundaries of existing <i>publicly maintainable highways</i> can be obtained from our <i>highways</i> registry ■ Information on existing PROWs can be obtained from our PROWs team ■ Our <i>highways</i> registry and PROWs team can be contacted through our <i>highway</i> adoptions team ■ The date the information was obtained should be stated
5. Planning and environmental constraints	<ul style="list-style-type: none"> ■ Any planning or environmental constraints, such as conservation areas, tree preservation orders (TPOs), listed buildings, scheduled monuments, areas of archaeological interest, and milestones and other roadside features of historical interest 	<ul style="list-style-type: none"> ■ The date the information was obtained should be stated
6. Site clearance	<ul style="list-style-type: none"> ■ Significant items of site clearance: <ul style="list-style-type: none"> – Buildings to be demolished – Foundations and concrete slabs to be removed or broken up – Paved areas to be broken up – Drains or utility apparatus to be abandoned, grouted up, or removed – Trees to be removed 	<ul style="list-style-type: none"> ■ None
7. Works to existing highways	<ul style="list-style-type: none"> ■ Entrance works ■ Frontage works including new kerblines and footways ■ Repositioned gullies and other drainage works ■ Haunching and resurfacing ■ Alterations to traffic signs, including road markings ■ Utility apparatus connections or diversions 	<ul style="list-style-type: none"> ■ None
8. Road and path layouts	<ul style="list-style-type: none"> ■ Layouts of proposed <i>streets</i> – including centrelines, chainages, carriageway widths, footway/footpath/cycle track widths, widths of verges and hard margins, visibility splays ■ <i>private streets</i> and private accesses, including: <ul style="list-style-type: none"> – Shared private drives – Vehicle crossings of footways and verges – Accesses to back gardens ■ Accesses to adjoining sites or developments and to existing <i>premises</i> 	<ul style="list-style-type: none"> ■ <i>Streets</i> should be labelled; plots should be numbered

Table of detailed design information

Drawing	Coverage	Comments
9. Parking and vehicle swept paths	<ul style="list-style-type: none"> ■ Resident, visitor, staff, and customer parking provision, including Informal on-carriageway parking places and parking places on private drives and in garages ■ Expected in-<i>highway</i> parking, whether or not in designated parking places ■ Swept paths for the full length of all roads for: <ul style="list-style-type: none"> – Light vehicles – Delivery vehicles – Refuse collection vehicles – Fire service vehicles 	<ul style="list-style-type: none"> ■ Parking spaces for different vehicle types should be differentiated ■ Informal on-carriageway parking places and parking places on private drives and in garages should be clearly identified ■ The dimensions and other relevant characteristics of the design vehicles used for the swept path analyses should be stated ■ The swept path analyses should be made with all on-carriageway parking places – both formal and informal – occupied
10. Design speeds and speed control features	<ul style="list-style-type: none"> ■ Speed control features – speed control bends, horizontal deflections, chicanes, road humps, speed cushions, junction speed tables 	<ul style="list-style-type: none"> ■ Design speeds for individual <i>streets</i> or sections of <i>street</i> should be stated
11. Long sections	<ul style="list-style-type: none"> ■ Long sections of <i>streets</i> on independent alignments ■ Levels, gradients, vertical curves, and chainages ■ Profiles of existing ground ■ Locations of junctions, speed control ramps or humps, and other significant features ■ Surface water drains that cross or run along <i>streets</i> 	<ul style="list-style-type: none"> ■ Levels and chainages should be shown at the beginnings and ends of long sections and at intervals of no more than 5 m ■ Levels and chainages should also be shown at the ends of vertical curves and straight grades, locations where gradients change using transverse crown lines, ramps, and other significant features, whether proposed or existing
12. Cross sections	<ul style="list-style-type: none"> ■ Cross sections of <i>streets</i> on independent alignments ■ Proposed earthworks, carriageways, footways, hard margins, retaining walls or similar ■ Existing ground 	<ul style="list-style-type: none"> ■ Cross sections should be at 10 m intervals except where it would be more appropriate to locate them at specific features, in which case they should be no more than 15 m apart
13. Proposed surface finishes	<ul style="list-style-type: none"> ■ Proposed surface finishes of carriageways, footways, footpaths, cycle tracks, hard margins, verges, drives, and shared private drives 	<ul style="list-style-type: none"> ■ All permeable surfaces should be shown and identified
14. Proposed kerbs, channels, and edgings	<ul style="list-style-type: none"> ■ Kerb, channel, and edging locations, types, and upstands ■ Combined kerb and drainage blocks, grated channels, and other linear drainage inlets 	<ul style="list-style-type: none"> ■ None

Table of detailed design information

Drawing	Coverage	Comments
15. Highway construction details	<ul style="list-style-type: none"> ■ Pavements and other paved areas – including footways and hard margins ■ Kerbs and channels ■ Road humps and ramps ■ <i>Street</i> furniture 	<ul style="list-style-type: none"> ■ None
16. Proposed drainage and flood management	<ul style="list-style-type: none"> ■ Proposed drainage ■ Connections between proposed drains and existing drains and between prospective <i>highway</i> drains and other drains ■ Access arrangements and facilities for attenuation tanks and pipes, culverts, swales, ponds, soakaways, pumping stations, outfalls, headwalls, and tail walls ■ Areas of permeable paving ■ Catchment areas for each gulley ■ Impermeable areas ■ Low points, high points, and flood routeing ■ Features to divert or control flooding, such as road humps, dropped kerbs, or extra-high kerbs ■ Private paved areas adjoining <i>publicly maintainable highways</i> 	<ul style="list-style-type: none"> ■ The drawing should clarify the status and use of the different types of existing or proposed drains
17. Drainage construction details	<ul style="list-style-type: none"> ■ Pipes, manholes, outfalls, cover slabs, attenuation tanks and pipes, culverts, swales 	<ul style="list-style-type: none"> ■ None
18. Street lighting, including construction details	<ul style="list-style-type: none"> ■ New <i>street</i> lighting, feeder pillars, and illuminated traffic signs ■ Existing <i>street</i> lighting, feeder pillars, and illuminated traffic signs to be upgraded or removed ■ Cabling and ducting ■ Connections to the public electricity supply ■ Construction details for columns, feeder pillars, illuminated traffic signs, and ducts 	<ul style="list-style-type: none"> ■ None
19. Traffic signs, including construction details	<ul style="list-style-type: none"> ■ Proposed new signs (including road markings) and changes to existing signs 	<ul style="list-style-type: none"> ■ None
20. Refuse storage and collection	<ul style="list-style-type: none"> ■ Location and design of in-curtilage or communal bin storage areas ■ Location and design of roadside bin presentation points 	<ul style="list-style-type: none"> ■ The drawing should state who would be responsible for the long-term care of any communal or shared facilities and any facilities that are not within the curtilage of an individual property

Table of detailed design information

Drawing	Coverage	Comments
<p>21. Boundary treatments</p>	<ul style="list-style-type: none"> ■ Walls, fences, hedges, and similar alongside <i>highways</i> ■ The heights of walls, fences, and similar ■ The composition and expected heights and spreads of hedges 	<ul style="list-style-type: none"> ■ The composition of hedges determines the expected height and spread, which can affect visibility and illumination and the likelihood of the hedges obstructing footways or similar
<p>22. Private accesses</p>	<ul style="list-style-type: none"> ■ Private accesses to adjacent <i>premises</i>, including to the rear and including vehicular and pedestrian accesses ■ Vehicle crossings of footways and verges ■ Access controls, such as gates, barriers, traffic signals, and gate houses ■ Areas for vehicles to wait until access is allowed ■ Turning facilities for vehicles refused access 	<ul style="list-style-type: none"> ■ Where use or operation of an access would vary with the time of day or week, this should be explained
<p>23. Public and private utility apparatus in highways</p>	<ul style="list-style-type: none"> ■ ‘Service strips’ (areas of carriageway or other paved areas allocated for underground apparatus) ■ Proposed public utility apparatus in existing or proposed <i>publicly maintainable highway</i> ■ <i>Highway</i> drainage and <i>street</i> lighting 	<ul style="list-style-type: none"> ■ Only ‘mains’ are required to be shown; it is not necessary to show individual service connections

Annex E – How to make up a private street and keep it private

Overview

E1 We give an overview of how to make up a *private street* and keep it private in paragraphs **164** to **177** and in **Flow Chart G** on page **19**.

E2 When we consider proposals to construct or make up a *private street* but then keep it private, we try to make sure that:

- we avoid the potential problems with *private streets* we describe in paragraphs **24** to **27**
- we protect the council's interests we describe in paragraphs **28** to **33**

Exemption notices

E3 As we say in paragraph **169**, if you want to make up a *private street* or *relevant proposed street* and then keep it private, the law allows us to cancel the *APC notice* and issue you with an *exemption notice*.

Preconditions

E4 We will not cancel an *APC notice*, issue an *exemption notice*, refund any *APC deposit* paid, or release any security given for a *private street* that is to be kept private unless:

- The *private street* has *highways technical approval*.
- You have agreed not to try to use **section 37** of the **Highways Act 1980** to make the *private street* into a *publicly maintainable highway*.
- You have agreed that when you sell the *approved building* you will include a restriction – which shall be legally enforceable by the council – on any future owners to prevent them from similarly trying to use **section 37** of the **Highways Act 1980**.
- You have finished the work required to construct or make up the *private street*.
- We have inspected your works and are satisfied that the *private street* has been constructed or made up to 'our satisfaction'.

■ We are satisfied that the *private street* or *relevant proposed street* will be appropriately managed and maintained.

■ Either you have finished any related works to existing *publicly maintainable highways* or suitable legal arrangements are in place to guarantee that these will be done.

We explain these preconditions in more detail in the following paragraphs.

Highways technical approval

E5 As we explain in paragraphs **39** to **46**, we have very onerous responsibilities for *publicly maintainable highways*. Therefore, we require that the following have *highways technical approval* before we will agree to them:

- New *private streets* near to existing publicly *maintainable highways*
- New connections between *private streets* and existing *publicly maintainable highways*

'Adoptable standards' and highway boundaries

E6 It can be confusing for the public and anyone responsible for maintaining or managing *streets* if *publicly maintainable highways* look like *private streets* and *private streets* look as if they have been adopted. Therefore:

- proposed *private streets* should not be constructed to 'adoptable standards'
- *private streets* should look as if they haven't been adopted
- the boundaries between *private streets* and *publicly maintainable highways* should be obvious even where there aren't any signs or notices

Required standards

E7 Although *private streets* should not be constructed to adoptable standards, we still have to make sure that:

- they would be made up to our satisfaction
- we would avoid the potential problems with *private streets*

Keeping a private street private: matters to consider for highways technical approval

Connections to neighbouring highways

- Will the connections to neighbouring *publicly maintainable highways* be safe for the public, whether in vehicles or on foot and regardless of whether they are entering the *private street* or just passing by?

Frontages

- Will the *frontage* of your development onto nearby *publicly maintainable highways* complement those of neighbouring *premises* to avoid confusing drivers about the character of the *highway*, for example whether it is a quiet residential *street* or a distributor road with few direct accesses.

Appearance

- Will the *private street* look like a *private street* and not like an adopted one?
- Will the boundaries between the *private street* and any *publicly maintainable highways* be obvious even where there aren't any signs or notices?

Entrances and exits

- Will the entrances and exits to the *private street* be safe to use or will they encourage drivers to make dangerous manoeuvres to use them?

Access controls

- Will any access controls, such as gates, cause queuing on nearby *publicly maintainable highways* or, when access is refused, require vehicles to reverse into nearby *publicly maintainable highways*?

Queuing and traffic congestion

- Will the internal layout of the *private street* allow vehicles to enter or leave it without causing queuing or traffic congestion on nearby *publicly maintainable highways*?

Parking

- Will the proposed parking facilities be suitable and have enough capacity, or will the *private street* encourage inappropriate or dangerous parking on nearby *publicly maintainable highways*?

Servicing, loading, and deliveries

- Will there be appropriate access for service vehicles and will loading and unloading facilities be suitable and have enough capacity, or will the *private street* encourage inappropriate or dangerous loading and unloading on nearby *publicly maintainable highways*?

Flooding

- Will the *private street* be suitably drained so that surface water does not flood neighbouring *premises* or nearby *publicly maintainable highways*?

Crime and disorder

- Will the *private street* have appropriate lighting to reassure legitimate users and deter criminals or antisocial behaviour?
- Will the *private street* usually be empty at night but still be accessible to the public? If so, has it been designed to deter antisocial or criminal behaviour?

User safety

- Will the *private street* be safe to use, or is it likely there will be demands for us to step in and make it safe?

Durability and maintainability

- Has the *private street* been designed to be easy to keep in a suitable condition or is it likely to deteriorate?

- we would protect the council's interests

Therefore, when we do our *highways* technical review, we will consider those matters described in the box above.

Section 37 of the Highways Act 1980

E8 *Private streets* that are intended to be kept private from the start are often constructed or made up to a lower and cheaper standard than ones which are to be adopted. This is perfectly acceptable if they are to remain private but we have to make sure that no one could use [section 37](#) of the [Highways Act 1980](#) to make a below-standard *private street* into a *publicly maintainable highway*.

Protection against misuse

E9 We describe our preferred way to protect the council against the potential misuse of [section 37](#) in paragraphs [178](#) to [188](#).

Your works and highway inspections

E10 To make sure that the *private street* has been constructed or made up to 'our satisfaction', we need to inspect it.

E11 We give more information about *highway* inspections in [Annex B](#).

Long-term management and maintenance

E12 There is no point in agreeing to your proposals if they will only be acceptable on the day the *private street* opens. We have to be confident that the *private street* will be appropriately managed and maintained so that it remains acceptable for the life of your development.

Section 106 planning obligations

E13 To make sure that the *private street* will be appropriately managed and maintained, we will usually require a ‘planning obligation’ made under **section 106** of the **Town and Country Planning Act 1990**. This should set out who has responsibility for maintaining the *street* and where the money to do this this would come from.

E14 In addition, the section 106 planning obligation should allow the council to step in and repair the *private street* if it is dangerous or causing problems to neighbouring *premises* or nearby *publicly maintainable highways*, and then to charge the costs of this to the landowners of the *premises* served by the *private street*.

Entrance works and works to existing publicly maintainable highways

E15 As we say in paragraph **127**, works to construct or make up a *private street* usually require work in or to an existing *publicly maintainable highway*. Therefore, before we will cancel an *APC notice* or issue an *exemption notice* for a *private street*, we need to make sure that either:

- any related works to existing *publicly maintainable highways* have been finished; or
- suitable legal arrangements are in place to guarantee that any related works will be done in a timely fashion.

E16 We give more information about doing private works to existing *publicly maintainable highways* in paragraphs **127** to **134**.

Procedure

Early discussions

E17 As we say in paragraph **177**, if you want to make up a *private street* or *relevant proposed street*

and then keep it private, you should get in touch with our *highway* adoptions team as soon as you can. We can then work with you to decide what would be a suitable standard for your *street*. Also, we can advise you on what drawings and other documents we would need to review your proposals.

Application and fee

E18 If we have issued you with an *APC notice* but you want to keep the *private street* private, then you need to:

- formally ask us to cancel the *APC notice* and issue you with an *exemption notice*
- pay us the non-refundable fee

E19 In your application, you need to say that you want to keep a *private street* private and want us to cancel the *APC notice* and issue you with an *exemption notice*. In addition, your application should:

- contain the additional information that we ask for in **Annex F**
- conform to the requirements we’ve set out in **Annex F**

Supporting documents

E20 Obviously, we need to see drawings of your proposed *private street* so that we can do our *highways* technical review. You should include these in your application.

E21 We have not listed which drawings you need to send us. Instead, you should look at the matters described in the box we referred to in paragraph **E7** and make sure that you send us the information we need to assess them.

E22 You should also send us copies of the following:

- The design and access statement
- The drainage strategy and flood risk assessment
- The transport statement and transport assessment or travel plan
- The section 106 obligation covering the long-term management and maintenance of the *private street*
- The signed deed stating that the landowner would not use **section 37**

■ The sale deeds of the *approved building*

Timeliness

E23 If you don't send us the information we need at the right time, it will increase the time it takes us to review your proposals. In addition, it may delay us paying you any refund that you are due.

Assigned case engineer

E24 Once our *highway* adoptions team has received confirmation that your fee has been paid, we will assign a case engineer to deal with your application. The case engineer will be our single point of contact for all *highway* matters relating to your *private street*.

E25 The first thing our case engineer will do is introduce themselves to you.

Highways technical review and assessment

E26 After we have received your application, our case engineer will start the *highways* technical review of your proposals.

E27 If we give your proposals *highways technical approval*, we will then assess whether they meet our preconditions for protection against the misuse of **section 37** of the **Highways Act 1980** and for long-term management and maintenance.

Construction

E28 As we say in paragraph **E10**, we will inspect your works during construction.

Exemption notices

E29 If you have met our other preconditions, then, once you have finished your works on site, you should tell our *highway* adoptions team. We will then do a final inspection of your works and a final check that you have met our other preconditions. If everything is in order, we will cancel your *APC notice* and issue you with an *exemption notice*.

If you don't tell us you've finished

E30 We won't cancel your *APC notice* or issue you with an *exemption notice* unless you tell our *highway* adoptions team that you have finished your works on site and met our other preconditions.

Refunds

E31 Once we have cancelled the *APC notice* and issued an *exemption notice*, we will then refund any *APC deposit* paid or release any security given, as described in paragraphs **108** to **112**. We won't, of course, refund our fees.

Annex F – Supplementary guidance on applications

Introduction

F1 When you apply either to get a private *street* adopted without a *section 38 agreement* or to keep a private *street* private, your application has to contain all the information that we need to assess it. In addition, it has to be in a form that allows us and you to keep track of what you told us and when.

Your application

General

F2 You should apply to us by email.

F3 In your application email, you should clearly state whether you are applying to get a private *street* adopted without a *section 38 agreement* or to keep a private *street* private.

Declaration

F4 In your application email, you should state explicitly that you:

- believe that the procedures and processes described in this highways guidance note are suitable and acceptable
- believe that the submitted information is complete, correct, and up to date
- believe that you have given us all the information you have on the existing condition of the site
- will inform us if you receive any additional information on the existing condition of the site
- confirm that the copyright holder of any document submitted will allow us to reproduce or distribute it – including to third parties – as we see fit
- have not submitted any ‘personal data’, as defined in the **General Data Protection Regulation (GDPR)**, without the consent of the subject of that data
- are complying with your duties under **the CDM Regulations**

Your team

Your contacts

- Your single point of contact for all *highway* adoption matters
- Your site-based contact for arranging inspections

Main CDM duty holders

- CDM client
- The CDM principal designer
- Other CDM designers
- The CDM principal contractor (if known)
- Other CDM contractors (if known)

Other CDM designers

- Buildings
- Earthworks, ground improvement or land remediation measures, treatment of mining features
- Flood routing and flood protection or mitigation works
- Foul and surface water drainage
- Landscaping or public open space
- Master planning
- Proposed *highways* – including associated *highway* drainage and *street* lighting
- Structures
- Utility apparatus – including broadband, gas, electricity, telecoms, and water

Your team

You and your contacts

F5 In your application email, you should tell us your address, phone number, and email address. In addition, if you are operating as a company, then you should tell us your company’s business name and full legal name.

Single points of contact

F6 To avoid the potential for confusion, you should designate a single point of contact for all *highway* adoption matters and then make sure that they are kept informed if your proposals change. Similarly, you should also designate a site-based contact for arranging inspections.

F7 In your application email, you should tell us who your single points of contact will be and how to contact them.

CDM duty holders

F8 Sometimes, when we review proposed *private streets* or give advice to developers, we count as a CDM designer for **the CDM Regulations**. To allow us to fulfil our legal duties, we need to know about the client and other designers. Therefore, in the application email, you should also tell us the business names and full legal names, addresses, phone numbers, and email addresses of the CDM duty holders listed in the box on the previous page.

Missing information

F9 We appreciate that, at the time you apply to us, you might not be able to tell us all the required information about your team. If this is the case, then you should say this in your application email and give us the missing information as soon as you can.

More information

F10 We say more about **the CDM Regulations** and how they affect proposals for new *streets* or works to existing ones in **Annex B**.

Your proposed development

General

F11 In your application email, you should tell us the following information about your proposed development:

- Its location
- The names of the existing *streets* from which access would be taken
- Any marketing names that you are using for the development
- The anticipated works start date
- The anticipated duration of the works

Related planning applications

F12 If we consider the *highways* aspects of a proposed development without considering the planning ones, then disruption and delay can result.

Accordingly, in your application email you should tell us the following for each related planning application:

- The planning reference
- The date of the application
- The name of the applicant
- The location
- A brief description of the development
- The outcome

Requirements of submitted documents

General

F13 Any documents that you send us as part of your application should comply with our highways guidance note **Requirements of Submitted Documents**.

Copyright

F14 When we review your proposals, we might need to share documents with other bodies. Therefore, you should make sure that the copyright holder of any document you send to us will allow us to reproduce or distribute it as we see fit.

Personal data

F15 You should not send to us any 'personal data' – as defined in the **General Data Protection Regulation** (GDPR) – unless:

- we need it to be able to review your proposals and progress your application; and
- you can prove that you have the consent of the subject of that data.

F16 Personal data includes such things as:

- Personal email addresses
- Names of the residents or former owners of specific properties
- Home phone numbers

More information

F17 Information about the GDPR is available from the **Information Commissioner's Office** (ICO). See the ICO's **Guide to the General Data Protection Regulation**.

Further information, comments, and queries

Kirklees Council highways standards and guidance

Highways guidance notes

- Emergency Access, Waste Management, Servicing, and Deliveries
- Existing Roads and Paths Affected by New Developments
- Gradients
- Highway Adoption Drawings
- Highway Adoptions and the CDM Regulations
- Highway Adoptions Criteria
- Highways Technical Approval
- Highways, SuDS, and Private Drainage
- Introduction to Highways and Adoptions
- Operation and Maintenance Manuals for Adopted Highways
- Private Streets and the Advance Payments Code
- Private Works to Existing Highways (Section 184 and 278 Agreements)
- Requirements of New and Improved Roads and Paths
- Requirements of Submitted Documents
- Section 38 Agreements for Highway Adoptions
- Soakaways

Other highways documents

- The Advance Payments Code and You: Help and Advice if You Have Just Been Given an Advance Payments Code Notice
- Kirklees Highways Standard Details

Comments and queries

Kirklees Council welcomes comments and queries about this highways guidance note

Although Kirklees Council is not responsible for the content of external websites, please report any broken links

- Huddersfield (01484) 22 1000 – ask for ‘Highway Adoptions’
- Highways.Section38@kirklees.gov.uk
- www.kirklees.gov.uk/highwayadoptions
- Kirklees Council
Highways Service
PO Box 1720
Huddersfield
HD1 9EL



www.kirklees.gov.uk/highwayadoptions